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## SEVENTY FIFTH DAY

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House Chamber, Olympia, Friday, March 25, 2011

The House was called to order at 10:00 a.m. by the Speaker (Representative Orwall 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 Holly Nelson and Cameron Hosking. The Speaker (Representative Orwall presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Pastor Mike Fogaras, Gateway Christian Center, Lacey, Washington.

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

### RESOLUTIONS

#### **HOUSE RESOLUTION NO. 2011-4643, by Representatives Liias and Roberts**

WHEREAS, The Kamiak boys swimming and diving team won its second 4A state championship in the last three years; and

WHEREAS, The remarkable team effort of these boys earned them 240.5 total points, placing them in first place with a seventy point lead; and

WHEREAS, The Kamiak Knights have won four consecutive District 1 titles, finished seventh at state championships in 2010, and improved upon their first state championship score in 2009 by eighteen and one-half points; and

WHEREAS, It was through remarkable teamwork and dedication that these boys were able to capture the state championship, despite not having ranked first place in a single event; and

WHEREAS, The Kamiak Knights received an All-American Consideration time of 58.35 seconds from teammate Liam Sosinsky's second place ranking in the 100-yard breaststroke;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives recognize each member of the Kamiak boys swimming and diving team for their extraordinary performance at the state championships and for continuing to prove themselves stellar athletes year after year; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Chief Clerk of the House of Representatives to the Mukilteo School District Board of Directors and the Kamiak High School Boys Swim Team.

The Speaker (Representative Orwall presiding) stated the question before the House to be adoption of House Resolution No. 4643.

HOUSE RESOLUTION NO. 4643 was adopted.

#### **HOUSE RESOLUTION NO. 2011-4644, by Representative Johnson**

WHEREAS, It is the policy of the Washington State Legislature to recognize excellence in all fields of endeavor; and

WHEREAS, On April 5, 2011, the Yakima Valley Hearing and Speech Center will celebrate its 40th anniversary of serving the needs

of children and adults in Central Washington who have speech and hearing disabilities; and

WHEREAS, The Yakima Valley Hearing and Speech Center is a nonprofit community agency established in 1971 by the Yakima Rotary Club, originally serving nine children needing deaf education, and is now the largest speech and hearing center in Central Washington; and

WHEREAS, The staff of the Yakima Valley Hearing and Speech Center has grown from 4 in 1971 to 23 today, employing speech language pathologists and educators for the deaf; and

WHEREAS, The Yakima Valley Hearing and Speech Center manages more than 17,000 appointments each year for children and adults with communication disabilities; and

WHEREAS, The Yakima Valley Hearing and Speech Center's services encompass pediatric through geriatric health care needs, addressing speech and language delay, neurological impairments of communication, traumatic brain injury, dysphasia, feeding impairments, voice disorders, and hearing impairment; and

WHEREAS, The Yakima Valley Hearing and Speech Center provides financial support to the Preschool Deaf Program with revenue over expenses from its services and United Way contributions; and

WHEREAS, The Yakima Valley Hearing and Speech Center works in concert with Yakima Memorial and Regional hospitals, nursing homes, home health care settings, Yakima Valley School and Children's Village; and

WHEREAS, The mission of the Yakima Valley Hearing and Speech Center is to be committed to understanding the needs of its patients and families, providing a service that best achieves its mutual goals, expecting excellence, continually striving to be the best, and remaining trustworthy, ethical, honest, and accountable for its actions;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives of the state of Washington honor the Yakima Valley Hearing and Speech Center for its many years of dedicated service in helping patients and families improve the quality and productivity of their lives; and

BE IT FURTHER RESOLVED, That a copy of this Resolution be immediately transmitted by the Chief Clerk of the House of Representatives to the Yakima Valley Hearing and Speech Center.

The Speaker (Representative Orwall presiding) stated the question before the House to be adoption of House Resolution No. 4644.

HOUSE RESOLUTION NO. 4644 was adopted.

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

### INTRODUCTIONS AND FIRST READING

HB 2036 by Representatives Pearson and Hurst

AN ACT Relating to implementing the policy recommendations resulting from the national institute of

corrections review of prison safety; adding new sections to chapter 72.09 RCW; and creating a new section.

Referred to Committee on Public Safety & Emergency Preparedness.

**HB 2037** by Representative Dunshee

AN ACT Relating to the implementation of year-round Pacific Standard Time; adding a new section to chapter 1.20 RCW; and repealing RCW 1.20.051.

Referred to Committee on State Government & Tribal Affairs.

There being no objection, the bills listed on the day's introduction sheet under the fourth order of business were referred to the committees so designated.

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

## SECOND READING

### MOTION

On motion of Representative Van De Wege, Representatives Appleton and Morris were excused.

**ENGROSSED SENATE BILL NO. 5005, by Senators Keiser, Honeyford, Pflug, Becker, Regala, Carrell, Hobbs, Nelson, Rockefeller, Shin and Chase**

#### Concerning exemption from immunization.

The bill was read the second time.

There being no objection, the committee amendment by the Committee on Health Care & Wellness was before the House for purpose of amendment. (For Committee amendment, see Journal, Day 64, March 16, 2011).

Representative Shea moved the adoption of amendment (464) to the committee amendment:

On page 1, beginning on line 25 of the striking amendment, strike all of subsection (2) and insert:

"(2)(a) The form presented on or after the effective date of this section must include:

(i) Information about the risks and benefits of child immunization; and

(ii)(A) A statement to be signed by a health care practitioner stating that he or she provided the signator with information about the benefits and risks of immunization to the child. A health care practitioner who, in good faith, signs the statement or letter provided for in this subsection is immune from civil liability for providing the signature; or

(B) A notarized statement signed by the parent or legal guardian of the child or any adult in loco parentis to the child who is seeking an exemption under subsection (1)(b) or (c) of this section declaring that the signator has read and understood the information provided about the risks and benefits of child immunization.

(b) The statement signed by a health care practitioner under (a)(ii)(A) of this subsection or the notarized statement provided under (a)(ii)(B) of this subsection may be signed at any time prior to the enrollment of the child in a school or licensed day care. Photocopies

of the signed or notarized form or a letter from the health care practitioner referencing the child's name shall be accepted in lieu of the original form."

Representatives Shea and Hinkle spoke in favor of the adoption of the amendment to the committee amendment.

Representative Cody spoke against the adoption of the amendment to the committee amendment.

Amendment (464) was not adopted.

There being no objection, the committee amendment was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill as amended by the House, was placed on final passage.

Representatives Cody, Bailey, Kagi, Jinkins and Anderson spoke in favor of the passage of the bill.

Representatives Shea, Orcutt, Hinkle, McCune and Overstreet spoke against the passage of the bill.

### COLLOQUY

Representative Bailey: "Engrossed Senate Bill 5005 requires parents who wish to exempt their child from school immunizations to get a signature from a health provider. This provider will have given the parent information about the benefits and risks of child immunization. But the bill also waives this new requirement for parents who are members of a church where the religious beliefs don't allow providing the child with medical treatment. Does this waiver require the Board of Health or the schools to adopt rules identifying the churches whose members would qualify for the waiver or deciding what documentation is required to show church membership?"

Representative Cody: "No. Neither the Board of Health nor the schools are expected to determine whether a parent may use this waiver. For many years, parents have been allowed to exempt their children from school immunizations for religious reasons. Under this bill, these parents can decide whether they need to waive the requirement to get the immunization information and the signature from a healthcare provider and how they will provide documentation for the waiver. For example, the legislative intent will be satisfied if a parent simply provides a letter from a church official chosen by the parent."

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Senate Bill No. 5005, as amended by the House.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Senate Bill No. 5005, as amended by the House, and the bill passed the House by the following vote: Yeas, 66; Nays, 29; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Bailey, Billig, Blake, Carlyle, Chandler, Clibborn, Cody, Dahlquist, Dammeier, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Frockt, Goodman, Green, Haigh, Haler, Hasegawa, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Ladenburg, Liias, Lytton, Maxwell, McCoy,

Miloscia, Moeller, Moscoso, Nealey, Ormsby, Orwall, Pedersen, Pettigrew, Probst, Reykdal, Roberts, Rodne, Rolfes, Ryu, Santos, Seaquist, Sells, Smith, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Walsh, Wilcox and Mr. Speaker.

Voting nay: Representatives Ahern, Angel, Armstrong, Asay, Buys, Condotta, Crouse, DeBolt, Fagan, Hargrove, Harris, Hinkle, Kirby, Klippert, Kretz, Kristiansen, McCune, Orcutt, Overstreet, Parker, Pearson, Rivers, Ross, Schmick, Shea, Short, Taylor, Warnick and Zeiger.

Excused: Representatives Appleton and Morris.

ENGROSSED SENATE BILL NO. 5005, as amended by the House, having received the necessary constitutional majority, was declared passed.

**ENGROSSED SUBSTITUTE SENATE BILL NO. 5124, by Senate Committee on Government Operations, Tribal Relations & Elections (originally sponsored by Senators White, Pridemore, Fraser and Shin)**

**Modifying elections by mail provisions.**

The bill was read the second time.

With the consent of the house, amendments (459), (460), (461) and (445) were withdrawn.

Representative Taylor moved the adoption of amendment (458).

On page 29, line 3, after "(1)" insert "The county auditor may not mail ballots to first time voters. First time voters must provide the county auditor with documented proof of citizenship before they are issued a ballot. Documented proof of citizenship includes:

- (a) A driver's license number or government issued identification if citizenship is indicated;
  - (b) A photocopy of a birth certificate;
  - (c) A passport; or
  - (d) Naturalization documents or a certificate of naturalization.
- (2) Service and overseas voters are exempt from subsection 1 of this section.
- (3)"

Renumber the remaining subsections consecutively and correct any internal references accordingly.

Representatives Taylor, Shea, Overstreet, Shea (again), Anderson, Orcutt and McCune spoke in favor of the adoption of the amendment.

Representatives Hunt, Pettigrew and Hunt (again) spoke against the adoption of the amendment.

Amendment (458) was not adopted.

Representative Shea moved the adoption of amendment (457).

On page 42, after line 9, insert the following:

"(d) If the signature on the declaration is not the same as the signature on the registration file because the spelling of the name as signed by the voter is not identical to the spelling of the name on the registration file, the ballot may be counted as long as the handwriting is clearly the same. The auditor must contact the voter to verify the correct spelling of the voter's name."

Representative Shea and Shea (again) spoke in favor of the adoption of the amendment.

Representative Hunt spoke against the adoption of the amendment.

Amendment (457) was not adopted.

Representative Taylor moved the adoption of amendment (462).

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 29A.04.008 and 2007 c 38 s 1 are each amended to read as follows:

As used in this title:

- (1) "Ballot" means, as the context implies, either:
  - (a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;
  - (b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;
  - (c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or
  - (d) The physical document on which the voter's choices are to be recorded;
- (2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;
- (3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;
- (4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;
- (5) "Provisional ballot" means a ballot issued ~~((at the polling place on election day by the precinct election board))~~ to a voter who would otherwise be denied an opportunity to vote a regular ballot, for any reason authorized by the Help America Vote Act, including but not limited to the following:
  - (a) The voter's name does not appear in the ~~((poll book))~~ list of registered voters for the county;
  - (b) There is an indication in the ~~((poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place))~~ voter registration system that the voter has already voted in that primary, special election, or general election, but the voter wishes to vote again;
  - (c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;
  - (d) Any other reason allowed by law;
- (6) "Party ballot" means a primary election ballot specific to a particular major political party that lists all candidates for partisan office who affiliate with that same major political party, as well as the nonpartisan races and ballot measures to be voted on at that primary;
- (7) "Nonpartisan ballot" means a primary election ballot that lists all nonpartisan races and ballot measures to be voted on at that primary.

"**Sec. 2.** RCW 29A.04.013 and 2003 c 111 s 103 are each amended to read as follows:

"Canvassing" means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of a primary or general election and includes the

tabulation of any votes that were not previously tabulated (~~(at the precinct or in a counting center on the day of the primary or election)~~)).

**Sec. 3.** RCW 29A.04.019 and 2003 c 111 s 104 are each amended to read as follows:

"Counting center" means the facility or facilities designated by the county auditor to count and canvass ((mail)) ballots(, absentee ballots, and polling place ballots that are transferred to a central site to be counted, rather than being counted by a poll-site ballot counting device, on the day of a primary or election)).

**Sec. 4.** RCW 29A.04.031 and 2003 c 111 s 106 are each amended to read as follows:

For registered voters voting by ((absentee or)) mail ((ballot)), "date of mailing" means the date of the postal cancellation on the envelope in which the ballot is returned to the election official by whom it was issued. For all ((nonregistered absentee)) service and overseas voters, "date of mailing" means the date stated by the voter on the ((envelope in which the ballot is returned to the election official by whom it was issued)) declaration.

**Sec. 5.** RCW 29A.04.037 and 2010 c 161 s 1103 are each amended to read as follows:

"Disabled voter" means any registered voter who qualifies for special parking privileges under RCW 46.19.010, or who is defined as blind under RCW 74.18.020, or who qualifies to require assistance with voting under ((RCW 29A.44.240)) section 43 of this act.

**Sec. 6.** RCW 29A.04.216 and 2004 c 271 s 104 are each amended to read as follows:

The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; ((to appoint the precinct election officers and to provide for their compensation)) to provide the supplies and materials necessary for the conduct of elections ((to the precinct election officers)); and to publish and post notices of calling such primaries and elections in the manner provided by law. The notice of a primary held in an even-numbered year must indicate that the office of precinct committee officer will be on the ballot. The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections. This section does not apply to general or special elections for any city, town, or district that is not subject to RCW 29A.04.321 and 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections.

**Sec. 7.** RCW 29A.04.220 and 2003 c 111 s 135 are each amended to read as follows:

The county auditor shall provide public notice of the availability of registration and voting aids, assistance to elderly and disabled persons, and procedures for voting ((by absentee ballot)) calculated to reach elderly and disabled persons not later than public notice of the closing of registration for a primary or election.

**Sec. 8.** RCW 29A.04.235 and 2003 c 111 s 138 are each amended to read as follows:

The secretary of state shall ensure that each county auditor is provided with the most recent version of the election laws of the state, as contained in this title. Where amendments have been enacted after the last compilation of the election laws, he or she shall ensure that each county auditor receives a copy of those amendments before the next primary or election. ((The county auditor shall ensure that any statutory information necessary for the precinct election officers to perform their duties is supplied to them in a timely manner.))

**Sec. 9.** RCW 29A.04.255 and 2004 c 266 s 5 are each amended to read as follows:

The secretary of state or a county auditor shall accept and file in his or her office electronic facsimile transmissions of the following documents:

- (1) Declarations of candidacy;
- (2) County canvass reports;
- (3) Voters' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a mandatory recount;
- (8) Requests for absentee ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under ((RCW 29A.04.610)) RCW 29A.04.611.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

If the original copy of a document must be signed and a copy of the document is filed by facsimile transmission under this section, the original copy must be subsequently filed with the official with whom the facsimile was filed. The original copy must be filed by a deadline established by the secretary by rule. The secretary may by rule require that the original of any document, a copy of which is filed by facsimile transmission under this section, also be filed by a deadline established by the secretary by rule.

**Sec. 10.** RCW 29A.04.470 and 2004 c 267 s 203 are each amended to read as follows:

(1) The secretary of state shall create an advisory committee and adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria for administering the local government grant program, which may include a preference for grants that include a match of local funds.

(2) The advisory committee shall review grant proposals and establish a prioritized list of projects to be considered for funding by the third Tuesday in May of each year beginning in 2004 and continuing as long as funds in the election account established by chapter 48, Laws of 2003 [RCW 29A.04.440] are available. The grant award may have an effective date other than the date the project is placed on the prioritized list, including money spent previously by the county that would qualify for reimbursement under the Help America Vote Act (P.L. 107-252).

(3) Examples of projects that would be eligible for local government grant funding include, but are not limited to the following:

- (a) Replacement or upgrade of voting equipment, including the replacement of punch card voting systems;
- (b) Purchase of additional voting equipment, including the purchase of equipment to meet the disability requirements of the Help America Vote Act (P.L. 107-252);
- (c) Purchase of new election management system hardware and software capable of integrating with the statewide voter registration system required by the Help America Vote Act (P.L. 107-252);
- (d) Development and production of ((poll)) election worker ((recruitment and)) training materials;
- (e) Voter education programs;
- (f) Publication of a local voters' pamphlet;
- (g) Toll-free access system to provide notice of the outcome of provisional ballots; and
- (h) Training for local election officials.

**Sec. 11.** RCW 29A.04.540 and 2009 c 415 s 9 are each amended to read as follows:

A person having responsibility for the administration or conduct of elections (~~(, other than precinct election officers,)~~) shall, within eighteen months of undertaking those responsibilities, receive general training regarding the conduct of elections and specific training regarding their responsibilities and duties as prescribed by this title or by rules adopted by the secretary of state under this title. Included among those persons for whom such training is mandatory are the following:

- (1) Secretary of state elections division personnel;
- (2) County elections administrators under RCW 36.22.220; and
- (3) Any other person or group charged with election administration responsibilities if the person or group is designated by rule adopted by the secretary of state as requiring the training.

Neither this section nor RCW 29A.04.530 may be construed as requiring an elected official to receive training or a certificate of training as a condition for seeking or holding elective office or as a condition for carrying out constitutional duties.

**Sec. 12.** RCW 29A.04.580 and 2003 c 111 s 156 are each amended to read as follows:

The county auditor may designate any person who has been certified under this chapter, other than the auditor, to participate in a review conducted in the county under this chapter. Each county auditor and canvassing board shall cooperate fully during an election review by making available to the reviewing staff any material requested by the staff. The reviewing staff shall have full access to ~~((ballot pages, absentee voting materials, any other election material normally kept in a secure environment after the election, and other requested))~~ the county's election material. If ballots are reviewed by the staff, they shall be reviewed in the presence of the canvassing board or its designees. Ballots shall not leave the custody of the canvassing board. During the review and after its completion, the review staff may make appropriate recommendations to the county auditor or canvassing board, or both, to bring the county into compliance with the training required under this chapter, and the laws or rules of the state of Washington, to safeguard election material or to preserve the integrity of the elections process.

**Sec. 13.** RCW 29A.04.611 and 2009 c 369 s 5 are each amended to read as follows:

The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;

(9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;

(10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;

(11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted ~~((at the polls or at a counting center));~~

(12) The use of substitute devices or means of voting when a voting device ~~((at the polling place))~~ is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;

(13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;

(14) The acceptance and filing of documents via electronic ~~((facsimile))~~ transmission;

(15) Voter registration applications and records;

(16) The use of voter registration information in the conduct of elections;

(17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;

(18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;

(19) Procedures to receive and distribute voter registration applications by mail;

(20) Procedures for a voter to change his or her voter registration address within a county by telephone;

(21) Procedures for a voter to change the name under which he or she is registered to vote;

(22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;

(23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;

(24) Procedures and forms for declarations of candidacy;

(25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;

(26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;

(27) Filing for office;

(28) The order of positions and offices on a ballot;

(29) Sample ballots;

(30) Independent evaluations of voting systems;

(31) The testing, approval, and certification of voting systems;

(32) The testing of vote tallying software programming;

(33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of ~~((absentee ballots and mail))~~ ballots, including standards for the approval and implementation of hardware and software for automated signature verification systems;

(34) Standards and procedures to guarantee the secrecy of ~~((absentee ballots and mail))~~ ballots;

(35) Uniformity among the counties of the state in the conduct of ~~((absentee voting and mail ballot))~~ elections;

(36) Standards and procedures to accommodate overseas voters and service voters;

(37) The tabulation of paper ballots ~~((before the close of the polls));~~

(38) The accessibility of ~~((polling places and registration facilities that are accessible to elderly and disabled persons))~~ voting centers;

(39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;

(40) Procedures for conducting a statutory recount;

(41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of ~~((absentee))~~ ballots, certification, canvassing, and related procedures cannot be met;

(42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;

(43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;

(44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;

(45) Procedures for the publication of a state voters' pamphlet;

(46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of ~~((absentee))~~ ballots, certification, canvassing, and related procedures cannot be met;

(47) Procedures for conducting partisan primary elections;

(48) Standards and procedures for the proper conduct of voting ~~((during the early voting period to provide accessibility for the blind or visually impaired))~~ on accessible voting devices;

(49) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;

(50) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);

(51) Defining the interaction of electronic voter registration election management systems employed by each county auditor to maintain a local copy of each county's portion of the official state list of registered voters;

(52) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252);

(53) Facilitating the payment of local government grants to local government election officers or vendors; and

(54) Standards for the verification of signatures on ~~((absentee, mail, and provisional))~~ ballot ~~((envelopes))~~ declarations.

**Sec. 14.** RCW 29A.08.130 and 2009 c 369 s 13 are each amended to read as follows:

Election officials shall not include inactive voters in the count of registered voters for the purpose of dividing precincts, ~~((creating vote-by-mail precincts,))~~ determining voter turnout, or other purposes in law for which the determining factor is the number of registered voters. ~~((Election officials shall not include persons who are ongoing absentee voters under RCW 29A.40.040 in determining the maximum permissible size of vote-by-mail precincts or in determining the maximum permissible size of precincts. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29A.60.230.))~~

**Sec. 15.** RCW 29A.08.140 and 2009 c 369 s 15 are each amended to read as follows:

(1) In order to vote in any primary, special election, or general election, a person who is not registered to vote in Washington must:

(a) Submit a registration application no later than twenty-nine days before the day of the primary, special election, or general election; or

(b) Register in person at the county auditor's office in his or her county of residence no later than eight days before the day of the

primary, special election, or general election. ~~((A person registering under this subsection will be issued an absentee ballot.))~~

(2) A person who is already registered to vote in Washington may update his or her registration no later than twenty-nine days before the day of the primary, special election, or general election to be in effect for that primary, special election, or general election. A registered voter who fails to transfer his or her residential address by this deadline may vote according to his or her previous registration address.

~~((3) Prior to each primary and general election, the county auditor shall give notice of the registration deadlines by one publication in a newspaper of general circulation in the county at least thirty-five days before the primary or general election.))~~

**Sec. 16.** RCW 29A.08.440 and 2009 c 369 s 25 are each amended to read as follows:

A registered voter who changes his or her name shall notify the county auditor regarding the name change by submitting a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence, and providing a signature of the new name, or by submitting a voter registration application.

~~((A properly registered voter who files a change-of-name notice at the voter's precinct polling place during a primary or election and who desires to vote at that primary or election shall sign the poll book using the voter's former and new names.))~~

**Sec. 17.** RCW 29A.08.620 and 2009 c 369 s 29 are each amended to read as follows:

(1) Each county auditor must request change of address information from the postal service for all ~~((absentee and))~~ mail ballots. ~~((A voter who votes at the polls must be mailed an election-related document, with change of address information requested, at least once every two years and at least ninety days prior to the date of a primary or general election for federal office.))~~

(2) The county auditor shall transfer the registration of a voter and send an acknowledgement notice to the new address informing the voter of the transfer if change of address information received by the county auditor from the postal service, the department of licensing, or another agency designated to provide voter registration services indicates that the voter has moved within the county.

(3) The county auditor shall place a voter on inactive status and send to all known addresses a confirmation notice and a voter registration application if change of address information received by the county auditor from the postal service, the department of licensing, or another agency designated to provide voter registration services indicates that the voter has moved from one county to another.

(4) The county auditor shall place a voter on inactive status and send to all known addresses a confirmation notice if any of the following occur:

(a) Any document mailed by the county auditor to a voter is returned by the postal service as undeliverable without address correction information; or

(b) Change of address information received from the postal service, the department of licensing, or another state agency designated to provide voter registration services indicates that the voter has moved out of the state.

**Sec. 18.** RCW 29A.08.720 and 2009 c 369 s 34 are each amended to read as follows:

(1) In the case of voter registration records received through the department of licensing or an agency designated under RCW 29A.08.310, the identity of the office or agency at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state agency designated under RCW 29A.08.310 is not available for public inspection and any information

regarding such a choice by a particular individual shall not be disclosed to the public.

(2) Subject to the restrictions of RCW 29A.08.710 and 40.24.060, ~~((poll books,))~~ precinct lists~~((s))~~ and current lists of registered voters are public records and must be made available for public inspection and copying under such reasonable rules and regulations as the county auditor or secretary of state may prescribe. The county auditor or secretary of state shall promptly furnish current lists of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information. The lists shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the lists and labels may be used for any political purpose. The county auditor or secretary of state must provide a copy of RCW 29A.08.740 to the person requesting the material that is released under this section.

(3) For the purposes of this section, "political purpose" means a purpose concerned with the support of or opposition to any candidate for any partisan or nonpartisan office or concerned with the support of or opposition to any ballot proposition or issue. "Political purpose" includes, but is not limited to, such activities as the advertising for or against any candidate or ballot measure or the solicitation of financial support.

**Sec. 19.** RCW 29A.08.775 and 2005 c 246 s 20 are each amended to read as follows:

Only voters who appear on the official statewide voter registration list are eligible to participate in elections. Each county shall maintain a copy of that county's portion of the state list. The county must ensure that voter registration data used for the production, issuance, and processing of ~~((poll lists and other lists and mailings done))~~ ballots in the administration of each election are the same as the official statewide voter registration list.

**Sec. 20.** RCW 29A.08.810 and 2006 c 320 s 4 are each amended to read as follows:

(1) Registration of a person as a voter is presumptive evidence of his or her right to vote. A challenge to the person's right to vote must be based on personal knowledge of one of the following:

- (a) The challenged voter has been convicted of a felony and the voter's civil rights have not been restored;
- (b) The challenged voter has been judicially declared ineligible to vote due to mental incompetency;
- (c) The challenged voter does not live at the residential address provided, in which case the challenger must either:
  - (i) Provide the challenged voter's actual residence on the challenge form; or
  - (ii) Submit evidence that he or she exercised due diligence to verify that the challenged voter does not reside at the address provided and to attempt to contact the challenged voter to learn the challenged voter's actual residence, including that the challenger personally:

(A) Sent a letter with return service requested to the challenged voter's residential address provided, and to the challenged voter's mailing address, if provided;

(B) Visited the residential address provided and contacted persons at the address to determine whether the voter resides at the address and, if not, obtained and submitted with the challenge form a signed affidavit subject to the penalties of perjury from a person who owns or manages property, resides, or is employed at the address provided, that to his or her personal knowledge the challenged voter does not reside at the address as provided on the voter registration;

(C) Searched local telephone directories, including online directories, to determine whether the voter maintains a telephone listing at any address in the county;

(D) Searched county auditor property records to determine whether the challenged voter owns any property in the county; and

(E) Searched the statewide voter registration database to determine if the voter is registered at any other address in the state;

(d) The challenged voter will not be eighteen years of age by the next election; or

(e) The challenged voter is not a citizen of the United States.

(2) A person's right to vote may be challenged~~((: ))~~ by another registered voter or the county prosecuting attorney ~~((at any time, or by the poll site judge or inspector if the challenge is filed on election day regarding a voter who presents himself or herself to vote at the poll site)).~~

(3) The challenger must file a signed affidavit subject to the penalties of perjury swearing that, to his or her personal knowledge and belief, having exercised due diligence to personally verify the evidence presented, the challenged voter either is not qualified to vote or does not reside at the address given on his or her voter registration record based on one of the reasons allowed in subsection (1) of this section. The challenger must provide the factual basis for the challenge, including any information required by subsection (1)(c) of this section, in the signed affidavit. The challenge may not be based on unsupported allegations or allegations by anonymous third parties. All documents pertaining to the challenge are public records.

(4) Challenges based on a felony conviction under RCW 29A.08.520 must be heard according to RCW 29A.08.520 and rules adopted by the secretary of state.

**Sec. 21.** RCW 29A.08.820 and 2006 c 320 s 5 are each amended to read as follows:

(1) Challenges initiated by a registered voter against a voter who registered to vote less than sixty days before the election, or who changed residence less than sixty days before the election without transferring his or her registration, must be filed not later than ten days before any primary or election, general or special, or within ten days of the voter being added to the voter registration database, whichever is later, at the office of the appropriate county auditor. Challenges initiated by a registered voter ~~((against any other voter))~~ or county prosecuting attorney must be filed not later than forty-five days before the election. ~~((Challenges initiated by the office of the county prosecuting attorney must be filed in the same manner as challenges initiated by a registered voter.))~~

(2)(a) If the challenge is filed within forty-five days before an election at which the challenged voter is eligible to vote, a notation of the challenge must be made immediately in the ~~((poll book or))~~ voter registration system, and the county canvassing board presides over the hearing.

(b) If the challenge is filed before the challenged voter's ballot is received, the ballot must be treated as a challenged ballot. ~~((A challenged ballot received at a polling place must be placed in a sealed envelope separate from other voted ballots.))~~

(c) If the challenge is filed after the challenged voter's ballot is received, the challenge cannot affect the current election.

(3) If the challenge is filed at least forty-five days before an election at which the challenged voter is eligible to vote, the county auditor presides over the hearing.

**Sec. 22.** RCW 29A.12.085 and 2005 c 242 s 1 are each amended to read as follows:

Beginning on January 1, 2006, all direct recording electronic voting devices must produce a paper record of each vote that may be accepted or rejected by the voter before finalizing his or her vote. This record may not be removed from the ~~((polling place))~~ voting center, and must be human readable without an interface and machine readable for counting purposes. If the device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter. Rejected records must either be destroyed or marked in order to clearly identify the record as rejected. Paper records produced by direct recording electronic voting devices are subject to all the requirements of chapter 29A.60 RCW for ballot handling, preservation, reconciliation, transit,

and storage. The paper records must be preserved in the same manner and for the same period of time as ballots.

**Sec. 23.** RCW 29A.12.110 and 2003 c 111 s 311 are each amended to read as follows:

In preparing a voting device for a primary or election, a record shall be made of the ~~((ballot format))~~ programming installed in each device ~~((and the precinct or portion of a precinct for which that device has been prepared)).~~ Except where provided by a rule adopted under RCW ~~((29A.04.610))~~ 29A.04.611, after being prepared for a primary or election, each device shall be sealed with a uniquely numbered seal ~~((and provided to the inspector of the appropriate polling place)).~~ The programmed memory pack for each voting device must be sealed into the device during final preparation and logic and accuracy testing. Except in the case of a device breakdown or error in programming, the memory pack must remain sealed in the device until after 8:00 p.m. on the day of the primary, special election, or general election.

**Sec. 24.** RCW 29A.12.120 and 2003 c 111 s 312 are each amended to read as follows:

(1) Before each state primary or general election at which voting systems are to be used, the county auditor shall instruct all ~~((precinct election officers appointed under RCW 29A.44.410.))~~ counting center personnel ~~((and political party observers designated under RCW 29A.60.170))~~ who will operate a voting system in the proper conduct of their voting system duties.

(2) The county auditor may waive instructional requirements for ~~((precinct election officers.))~~ counting center personnel ~~((and political party observers))~~ who have previously received instruction and who have served for a sufficient length of time to be fully qualified to perform their duties. The county auditor shall keep a record of each person who has received instruction and is qualified to serve at the subsequent primary or election.

(3) ~~((As compensation for the time spent in receiving instruction, each precinct election officer who qualifies and serves at the subsequent primary or election shall receive an additional two hours compensation, to be paid at the same time and in the same manner as compensation is paid for services on the day of the primary or election.~~

(4) Except for the appointment of a precinct election officer to fill a vacancy under RCW 29A.44.440, no inspector or judge may serve at any primary or election at which voting systems are used unless he or she has received the required instruction and is qualified to perform his or her duties in connection with the voting devices.)) No person may work in a counting center at a primary or election at which a vote tallying system is used unless that person has received the required instruction and is qualified to perform his or her duties in connection with the handling and tallying of ballots for that primary or election. ~~((No person may serve as a political party observer unless that person has received the required instruction and is familiar with the operation of the counting center and the vote tallying system and the procedures to be employed to verify the accuracy of the programming for that vote tallying system.))~~

**Sec. 25.** RCW 29A.12.160 and 2004 c 267 s 701 are each amended to read as follows:

(1) At each ~~((polling location))~~ voting center, at least one voting unit certified by the secretary of state shall provide access to individuals who are blind or visually impaired.

(2) ~~((Compliance with this provision in regard to voting technology and systems purchased prior to July 27, 2003, shall be achieved at the time of procurement of an upgrade of technology compatible with nonvisual voting methods or replacement of existing voting equipment or systems.~~

(3) Compliance with subsection (2) of this section is contingent on available funds to implement this provision.

(4)) For purposes of this section, the following definitions apply:

(a) "Accessible" includes receiving, using, selecting, and manipulating voter data and controls.

(b) "Nonvisual" includes synthesized speech, Braille, and other output methods.

(c) "Blind and visually impaired" excludes persons who are both deaf and blind.

~~((5))~~ This section does not apply to voting by absentee ballot.))

**Sec. 26.** RCW 29A.16.040 and 2004 c 266 s 10 are each amended to read as follows:

The county legislative authority of each county in the state ~~((hereafter formed))~~ shall ~~((at their first session.))~~ divide ~~((their respective counties))~~ the county into election precincts and establish the boundaries of the precincts. ~~((The county auditor shall thereupon designate the voting place for each such precinct or whether the precinct is a vote by mail precinct.))~~

(1) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection ~~((5))~~ (3) of this section, no precinct ~~((boundaries))~~ changes may be ~~((changed))~~ made during the period starting ~~((on the thirtieth))~~ fourteen days prior to the first day for candidates to file for the primary election and ending with the day of the general election.

(2) The county legislative authority may establish by ordinance a limitation on the maximum number of active registered voters in each precinct within its jurisdiction. The ~~((limitation may be different for precincts based upon the method of voting used for such precincts and the))~~ number may be less than the number established by law, but in no case may the number exceed ~~((that authorized by law))~~ two thousand active registered voters.

(3) ~~((Precincts in which voting machines or electronic voting devices are used may contain as many as nine hundred active registered voters. The number of poll-site ballot counting devices at each polling place is at the discretion of the auditor. The number of devices must be adequate to meet the expected voter turnout.~~

(4) On petition of twenty-five or more voters resident more than ten miles from any polling site, the county legislative authority shall establish a separate voting precinct therefor.

(5)) The county auditor shall temporarily adjust precinct boundaries when a city or town annexes unincorporated territory to the city or town, or whenever unincorporated territory is incorporated as a city or town. The adjustment must be made as soon as possible after the approval of the annexation or incorporation. The temporary adjustment must be limited to the minimum changes necessary to accommodate the addition of the territory to the city or town, or to establish the eligible voters within the boundaries of the new city or town, and remains in effect only until precinct boundary modifications reflecting the annexation or incorporation are adopted by the county legislative authority.

~~((6))~~ In determining the number of active registered voters for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29A.60.230.))

**Sec. 27.** RCW 29A.24.081 and 2004 c 271 s 159 are each amended to read as follows:

Any candidate may mail his or her declaration of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be processed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on



the last day of the filing period shall be included with filings made in person during the filing period. ~~((In partisan and judicial elections the filing officer shall determine by lot the order in which the names of those candidates shall appear upon sample and absentee primary ballots.))~~

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candidates to file for office shall be rejected and returned to the candidate attempting to file it.

**Sec. 28.** RCW 29A.28.061 and 2004 c 271 s 119 are each amended to read as follows:

The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in chapter 29A.28 RCW to the extent that they are not inconsistent with the provisions of these sections. Minor political party and independent candidates may appear only on the general election ballot. Statutory time deadlines relating to availability of ~~((absentee))~~ ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29A.04.611.

**Sec. 29.** RCW 29A.32.241 and 2004 c 271 s 123 are each amended to read as follows:

The local voters' pamphlet shall include but not be limited to the following:

(1) Appearing on the cover, the words "official local voters' pamphlet," the name of the jurisdiction producing the pamphlet, and the date of the election or primary;

(2) A list of jurisdictions that have measures or candidates in the pamphlet;

(3) Information on how a person may register to vote and obtain ~~((an absentee))~~ a ballot;

(4) The text of each measure accompanied by an explanatory statement prepared by the prosecuting attorney for any county measure or by the attorney for the jurisdiction submitting the measure if other than a county measure. All explanatory statements for city, town, or district measures not approved by the attorney for the jurisdiction submitting the measure shall be reviewed and approved by the county prosecuting attorney or city attorney, when applicable, before inclusion in the pamphlet;

(5) The arguments for and against each measure submitted by committees selected pursuant to RCW 29A.32.280; and

(6) For partisan primary elections, information on how to vote the applicable ballot format and an explanation that minor political party candidates and independent candidates will appear only on the general election ballot.

**Sec. 30.** RCW 29A.32.260 and 2003 c 111 s 818 are each amended to read as follows:

As soon as practicable before the primary, special election, or general election, the county auditor, or if applicable, the city clerk of a first-class or code city, as appropriate, shall mail the local voters' pamphlet to every residence in each jurisdiction that has included information in the pamphlet. The county auditor or city clerk, as appropriate, may choose to mail the pamphlet to each registered voter in each jurisdiction that has included information in the pamphlet, if in his or her judgment, a more economical and effective distribution of the pamphlet would result. ~~((If the county or city chooses to mail the pamphlet to each residence, no notice of election otherwise required by RCW 29A.52.350 need be published.))~~

**Sec. 31.** RCW 29A.36.115 and 2005 c 243 s 3 are each amended to read as follows:

All provisional ~~((and absentee))~~ ballots must be visually distinguishable from ~~((each))~~ other ballots and ~~((must be either:~~

- (1) Printed on colored paper; or
- (2) Imprinted with a bar code for the purpose of identifying the

ballot as a provisional or absentee ballot. The bar code must not identify the voter.

Provisional and absentee ballots must be) incapable of being tabulated by ~~((poll-site counting devices))~~ a voting system.

**Sec. 32.** RCW 29A.36.131 and 2004 c 271 s 130 are each amended to read as follows:

After the close of business on the last day for candidates to file for office, the filing officer shall, from among those filings made in person and by mail, determine by lot the order in which the names of those candidates will appear on all ~~((primary, sample, and absentee))~~ ballots. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required for any nonpartisan office under RCW 29A.52.011 or 29A.52.220, or if any independent or minor party candidate files a declaration of candidacy, the names shall appear on the general election ballot in the order determined by lot.

**Sec. 33.** RCW 29A.36.161 and 2010 c 32 s 1 are each amended to read as follows:

(1) On the top of each ballot must be printed clear and concise instructions directing the voter how to mark the ballot, including write-in votes. On the top of each primary ballot must be printed the instructions required by this chapter.

(2) The ballot must have a clear delineation between the ballot instructions and the first ballot measure or office through the use of white space, illustration, shading, color, symbol, font size, or bold type. The secretary of state shall establish standards for ballot design and layout consistent with this section and RCW 29A.04.611.

(3) The questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election must appear after the instructions and before any offices.

(4) In a year that president and vice president appear on the general election ballot, the names of candidates for president and vice president for each political party must be grouped together with a single response position for a voter to indicate his or her choice.

(5) On a general election ballot, the candidate or candidates of the major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election must appear first following the appropriate office heading. The candidate or candidates of the other major political parties will follow according to the votes cast for their nominees for president at the last presidential election, and independent candidates and the candidate or candidates of all other parties will follow in the order of their qualification with the secretary of state.

~~((6))~~ All paper ballots and ballot cards used at a polling place must be sequentially numbered in such a way to permit removal of such numbers without leaving any identifying marks on the ballot.)

**Sec. 34.** RCW 29A.36.220 and 2003 c 111 s 922 are each amended to read as follows:

The cost of printing and mailing ballots, ~~((ballot cards))~~ envelopes, and instructions ~~((and the delivery of this material to the precinct election officers))~~ shall be an election cost that shall be borne as determined under RCW 29A.04.410 and 29A.04.420, as appropriate.

**Sec. 35.** RCW 29A.40.010 and 2009 c 369 s 36 are each amended to read as follows:

~~((Any))~~ Each registered voter of the state ~~((or any))~~, overseas voter ~~((or))~~, and service voter ~~((may vote by absentee))~~ shall automatically be issued a mail ballot ~~((in any))~~ for each general election, special election, or primary ~~((in the manner provided in this chapter))~~. Overseas voters and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter. Each registered voter shall continue to receive a ballot by mail until the death or disqualification of the voter, cancellation of the voter's registration, or placing the voter on inactive status.

**Sec. 36.** RCW 29A.40.020 and 2009 c 369 s 37 are each amended to read as follows:

(1) ((Except as otherwise provided by law, a registered voter, overseas voter, or service voter desiring to cast an absentee ballot at a single election or primary must request the absentee ballot from his or her county auditor no earlier than ninety days nor later than the day before the election or primary at which the person seeks to vote. Except as otherwise provided by law, the request may be made orally in person, by telephone, electronically, or in writing. An application or request for an absentee ballot made under the authority of a federal statute or regulation will be considered and given the same effect as a request for an absentee ballot under this chapter.

(2) A voter requesting an absentee ballot for a primary may also request an absentee ballot for the following general election. A request by an overseas voter or service voter for an absentee ballot for a primary election will be considered as a request for an absentee ballot for the following general election.

(3) In requesting an absentee ballot, the voter shall state the address to which the absentee ballot should be sent.) A request for ((an absentee)) a ballot from an overseas voter or service voter must include the address of the last residence in the state of Washington ((and either a written application or the oath on the return envelope must include a declaration of the other qualifications of the applicant as an elector of this state. A request for an absentee ballot from any other voter must state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify that information from the voter registration records of the county.

(4) A request for an absentee ballot from a registered voter who is within this state must be made directly to the auditor of the county in which the voter is registered. An absentee ballot request from a registered voter who is temporarily outside this state or from an overseas voter or service voter may be made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the request to the appropriate county auditor).

((5)) (2) No person, organization, or association may distribute ((absentee ballot applications within this state)) any ballot materials that contain a return address other than that of the appropriate county auditor.

**Sec. 37.** RCW 29A.40.050 and 2003 c 111 s 1005 are each amended to read as follows:

(1) ((As provided in this section,)) County auditors shall provide special absentee ballots to be used for state primary or state general elections. An auditor shall provide a special absentee ballot only to a registered voter who completes an application stating that she or he will be unable to vote and return a regular ((absentee)) ballot by normal mail delivery within the period provided for regular ((absentee)) ballots.

((The application for)) A special absentee ballot may not be ((filed earlier)) requested more than ninety days before the applicable state primary or general election. The special absentee ballot will list the offices and measures, if known, scheduled to appear on the state primary or general election ballot. The voter may use the special absentee ballot to write in the name of any eligible candidate for each office and vote on any measure.

(2) ((With any special absentee ballot issued under this section,)) The county auditor shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that primary or election and a list of any issues that have been referred to the ballot before the time of the application.

(3) Write-in votes on special absentee ballots must be counted in the same manner provided by law for the counting of other write-in votes. The county auditor shall process and canvass the special absentee ballots provided under this section in the same manner as other ((absentee)) ballots under this chapter and chapter 29A.60 RCW.

(4) A voter who requests a special absentee ballot under this section may also request ((an absentee)) a regular ballot ((under RCW 29A.40.020(4))). If the regular absentee ballot is properly voted and returned, the special absentee ballot is void, and the county auditor shall reject it in whole when special absentee ballots are canvassed.

**Sec. 38.** RCW 29A.40.070 and 2006 c 344 s 13 are each amended to read as follows:

(1) Except where a recount or litigation ((under RCW 29A.68.011)) is pending, the county auditor ((shall have sufficient absentee ballots available for absentee voters of that county, other than overseas voters and service voters, at least twenty days before any primary, general election, or special election. The county auditor)) must mail ((absentee)) ballots to each voter ((for whom the county auditor has received a request nineteen days before the primary or election)) at least eighteen days before ((the)) each primary or election, and as soon as possible for all subsequent registration changes. ((For a request for an absentee ballot received after the nineteenth day before the primary or election, the county auditor shall make every effort to mail ballots within one business day, and shall mail the ballots within two business days.))

(2) ((At least thirty days before any primary, general election, or special election, the county auditor shall mail ballots to all overseas and service voters.)) Except where a recount or litigation is pending, the county auditor must mail ballots to each service and overseas voter at least thirty days before each primary or election. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each request for a replacement ballot.

(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots ((prescribed in subsection (1) of this section were available and)) were mailed, or the reason and date the ballots will be mailed if the ballots were not mailed timely.

((4)) If absentee ballots will not be available or mailed as prescribed in subsection (1) of this section, the county auditor shall immediately certify to the office of the secretary of state when absentee ballots will be available and mailed. Copies of this certification must be provided to the county canvassing board, the press, jurisdictions with issues on the ballot in the election, and any candidates.

(5) If absentee ballots were not available or mailed as prescribed in subsection (1) of this section, for a reason other than a recount or litigation, the county auditor, in consultation with the certification and training program of the office of the secretary of state, shall submit a report to the office of the secretary of state outlining why the deadline was missed and what corrective actions will be taken in future elections to ensure that absentee ballots are available and mailed as prescribed in subsection (1) of this section.

—((6)) Failure to ((have absentee ballots available and mailed)) mail ballots as prescribed in ((subsection (1) of)) this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election.

**Sec. 39.** RCW 29A.40.091 and 2010 c 125 s 1 are each amended to read as follows:

(1) The county auditor shall send each voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, a declaration that the voter must sign, and instructions on how to obtain information about the election, how to mark the ballot, and how to return ((#)) the ballot to the county auditor.

(2) The ((instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot

style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she) voter must swear under penalty of perjury that he or she meets the qualifications to vote, and has not voted in any other jurisdiction at this election(, together with a summary of the penalties for any violation of any of the provisions of this chapter)). The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and(, except as otherwise provided by law,) it is illegal to cast a ballot or sign a return envelope on behalf of another voter. The ((return envelope)) ballot materials must provide space for the voter to indicate the date on which the ballot was voted ((and for the voter)), to sign the ((oath)) declaration((. It must also contain a space so that the voter may include)) and to provide a telephone number. ((A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope may provide secrecy for the voter's signature and optional telephone number.))

(3) For overseas and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. Return envelopes for overseas and service voters must enable the ballot to be returned postage free if mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy under 39 U.S.C. 3406.

(4) The voter must be instructed to either return the ballot to the county auditor ((by whom it was issued)) no later than 8:00 p.m. the day of the election or primary, or ((attach sufficient first class postage, if applicable, and)) mail the ballot to the ((appropriate)) county auditor with a postmark no later than the day of the election or primary((for which the ballot was issued).

If the county auditor chooses to forward ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed)).

**Sec. 40.** RCW 29A.40.100 and 2003 c 111 s 1010 are each amended to read as follows:

County auditors must request that observers be appointed by the major political parties to be present during the processing of ((absentee)) ballots at the counting center. County auditors have discretion to also request that observers be appointed by any campaigns or organizations. The absence of the observers will not prevent the processing of ((absentee)) ballots if the county auditor has requested their presence.

**Sec. 41.** RCW 29A.40.110 and 2009 c 369 s 40 are each amended to read as follows:

(1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received ((absentee)) return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until ((after 8:00 p.m. of the day of the primary or election)) processing. ((Absentee ballots that are to be tabulated on an

electronic vote tallying system)) Ballots may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) ((Before opening a returned absentee ballot,)) The canvassing board, or its designated representatives, shall examine the postmark((statement)) on the return envelope and signature on the ((return envelope that contains the security envelope and absentee ballot)) declaration before processing the ballot. The ballot must either be received no later than 8:00 p.m. on the day of the primary or election, or must be postmarked no later than the day of the primary or election. All personnel assigned to verify signatures must receive training on statewide standards for signature verification. Personnel shall verify that the voter's signature on the ((return envelope)) ballot declaration is the same as the signature of that voter in the registration files of the county. Verification may be conducted by an automated verification system approved by the secretary of state. For any absentee ballot, a variation between the signature of the voter on the ((return envelope)) ballot declaration and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

(4) ((For registered voters casting absentee ballots)) If the postmark is missing or illegible, the date on the ((return envelope)) ballot declaration to which the voter has attested determines the validity, as to the time of voting, for that ((absentee)) ballot ((if the postmark is missing or is illegible)). For overseas voters and service voters, the date on the ((return envelope)) declaration to which the voter has attested determines the validity, as to the time of voting, for that ((absentee)) ballot.

**Sec. 42.** RCW 29A.40.130 and 2003 c 111 s 1013 are each amended to read as follows:

Each county auditor shall maintain in his or her office, open for public inspection, a record of ((the requests he or she has received for absentee ballots under this chapter.

The information from the requests shall be recorded and lists of this information shall be available no later than twenty-four hours after their receipt.

This information about absentee voters shall be available according to the date of the requests and by legislative district. It shall include the name of each applicant, the address and precinct in which the voter maintains a voting residence, the date on which an absentee ballot was issued to this voter, if applicable, the type of absentee ballot, and the address to which the ballot was or is to be mailed, if applicable.

The auditor shall make copies of these records available to the public for the actual cost of production or copying)) all voters issued a ballot and all voters who returned a ballot. For each primary, special election, or general election, any political party, committee, or person may request a list of all registered voters who have or have not voted. Such requests shall be handled as public records requests pursuant to chapter 42.56 RCW.

**NEW SECTION. Sec. 43.** A new section is added to chapter 29A.44 RCW to read as follows:

(1) Each county auditor shall open a voting center each primary, special election, and general election. The voting center shall be open during business hours during the voting period, which begins eighteen days before, and ends at 8:00 p.m. on the day of, the primary, special election, or general election.

(2) The voting center must provide voter registration materials, ballots, provisional ballots, disability access voting units, sample ballots, instructions on how to properly vote the ballot, a ballot drop box, and voters' pamphlets, if a voters' pamphlet has been published.

(3) The voting center must be accessible to persons with disabilities. Each state agency and entity of local government shall permit the use of any of its accessible facilities as voting centers when requested by a county auditor.

(4) The voting center must provide at least one voting unit inspected by the secretary of state that provides access to individuals who are blind or visually impaired, enabling them to vote with privacy and independence.

(5) No person may interfere with a voter attempting to vote in a voting center. Interfering with a voter attempting to vote is a violation of RCW 29A.84.510.

(6) Before opening the voting center, the voting equipment shall be inspected to determine if it has been properly prepared for voting. If the voting equipment is capable of direct tabulation of each voter's choices, the county auditor shall verify that no votes have been registered for any issue or office, and that the device has been sealed with a unique numbered seal at the time of final preparation and logic and accuracy testing. A log must be made of all device numbers and seal numbers.

(7) The county auditor shall require any person desiring to vote at a voting center to must either sign a ballot declaration or provide identification.

(a) The signature on the declaration must be compared to the signature on the voter registration record before the ballot may be counted. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.

(b) The identification must be valid photo identification, such as a driver's license, state identification card, student identification card, tribal identification card, or employer identification card. Any individual who desires to vote in person but cannot provide identification shall be issued a provisional ballot, which shall be accepted if the signature on the declaration matches the signature on the voter's registration record.

(8) Provisional ballots must be accompanied by a declaration and security envelope, as required by RCW 29A.40.091, and space for the voter's name, date of birth, current and former registered address, reason for the provisional ballot, and disposition of the provisional ballot. The voter shall vote and return the provisional ballot at the voting center. The voter must be provided information on how to ascertain whether the provisional ballot was counted and, if applicable, the reason why the vote was not counted.

(9) Any voter may take printed or written material into the voting device to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove it when he or she leaves the voting center.

(10) If any voter states that he or she is unable to cast his or her votes due to a disability, the voter may designate a person of his or her choice, or two election officers, to enter the voting booth and record the votes as he or she directs.

(11) No voter is entitled to vote more than once at a primary, special election, or general election. If a voter incorrectly marks a ballot, he or she may be issued a replacement ballot.

(12) A voter who has already returned a ballot but requests to vote at a voting center shall be issued a provisional ballot. The canvassing board shall not count the provisional ballot if it finds that the voter has also voted a regular ballot in that primary, special election, or general election.

(13) The county auditor must prevent overflow of each ballot drop box to allow a voter to deposit his or her ballot securely. Ballots must be removed from a ballot drop box by at least two people, with a record kept of the date and time ballots were removed, and the names of people removing them. Ballots from drop boxes must be returned to the counting center in secured transport containers. A copy of the record must be placed in the container, and one copy must be transported with the ballots to the counting center, where the seal number must be verified by the county auditor or a designated representative. All ballot drop boxes must be secured at 8:00 p.m. on the day of the primary, special election, or general election.

(14) Any voter who is inside or in line at the voting center at 8:00 p.m. on the day of the primary, special election, or general election must be allowed to vote.

(15) For each primary, special election, and general election, the county auditor may provide election services at locations in addition to the voting center. The county auditor has discretion to establish which services will be provided at the additional locations, and which days and hours the locations will be open.

**Sec. 44.** RCW 29A.46.260 and 2010 c 215 s 5 are each amended to read as follows:

(1) The legislature finds that the elimination of polling places resulting from the transition to vote by mail creates barriers that restrict the ability of many voters with disabilities from achieving the independence and privacy in voting provided by the accessible voting devices required under the help America vote act. Counties ~~((adopting a vote by mail system))~~ must take appropriate steps to mitigate these impacts and to address the obligation to provide voters with disabilities an equal opportunity to vote independently and privately, to the extent that this can be achieved without incurring undue administrative and financial burden.

(2) Each county shall establish and maintain an advisory committee that includes persons with diverse disabilities and persons with expertise in providing accommodations for persons with disabilities. The committee shall assist election officials in developing a plan to identify and implement changes to improve the accessibility of elections for voters with disabilities. The plan shall include recommendations for the following:

(a) The number of ~~((polling places))~~ voting centers that will be maintained in order to ensure that people with disabilities have reasonable access to accessible voting devices, and a written explanation for how the determination was made;

(b) The locations of ~~((polling places))~~ ballot drop-off facilities, voting centers, and other election-related functions necessary to maximize accessibility to persons with disabilities;

(c) Outreach to voters with disabilities on the availability of disability accommodation, including in-person disability access voting;

(d) Transportation of voting devices to locations convenient for voters with disabilities in order to ensure reasonable access for voters with disabilities; and

(e) Implementation of the provisions of the help America vote act related to persons with disabilities.

Counties must update the plan at least annually. The election review staff of the secretary of state shall review and evaluate the plan in conformance with the review procedure identified in RCW 29A.04.570.

(3) Counties may form a joint advisory committee to develop the plan identified in subsection (2) of this section if no more than one of the participating counties has a population greater than seventy thousand.

**NEW SECTION. Sec. 45.** A new section is added to chapter 29A.52 RCW to read as follows:

Notice for any state, county, district, or municipal primary or election, whether special or general, must be given by the county auditor between five and fifteen days prior to the deadline for mail-in registrations. The notice must be published in one or more newspapers of general circulation and must contain, at a minimum, the last date to register online or through the mail, the last date to transfer or update an existing registration, the last date to register in person for first-time voters, information on where a person can register, the type of election, the date of the election, how a voter can obtain a ballot, a list of all jurisdictions involved in the election, including positions and short titles for ballot measures appearing on the ballot, and the times and dates of any public meetings associated with the election. The notice shall also include where additional information regarding the election may be obtained. This is the only

notice required for a state, county, district, or municipal primary or special or general election. If the county or city chooses to mail a local voters' pamphlet as described in RCW 29A.32.210 to each residence, the notice required in this section need only include the last date to register online or through the mail, the last date to transfer or update an existing registration, the last date to register in person for first-time voters, information on where a person can register, and the times and dates of any public meetings associated with the election.

**Sec. 46.** RCW 29A.56.490 and 2003 c 111 s 1438 are each amended to read as follows:

The election officials shall count and determine the number of votes cast for each individual; and shall also count and determine the aggregate number of votes cast for all candidates whose names appear under each of the respective headings. Where more than the required number have been voted for, the ballot must be rejected. ~~((The figures determined by the various counts must be entered in the poll books of the respective precincts.))~~ The vote must be canvassed in each county by the county canvassing board, and certificate of results must within fifteen days after the election be transmitted to the secretary of state. Upon receiving the certificate, the secretary of state may require precinct returns ~~((or poll books))~~ from any county ~~((precinct to))~~ be forwarded for the secretary's examination.

Where a district embraces precincts of more than one county, the secretary of state shall combine the votes from all the precincts included in each district. The delegates elected in each district will be the number of candidates corresponding to the number of state representatives from the district, who receive the highest number of votes in the group (either "for" or "against") that received an aggregate number of votes for all candidates in the group greater than the aggregate number of votes for all the candidates in the other group. The secretary of state shall issue certificates of election to the delegates so elected.

**Sec. 47.** RCW 29A.60.040 and 2009 c 414 s 2 are each amended to read as follows:

A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW 29A.60.021; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the ~~((election board or the))~~ canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote.

**Sec. 48.** RCW 29A.60.050 and 2005 c 243 s 13 are each amended to read as follows:

Whenever the ~~((precinct election officers or the))~~ counting center personnel have a question about the validity of a ballot or the votes for an office or issue that they are unable to resolve, they shall prepare and sign a concise record of the facts in question or dispute. These ballots shall be delivered to the canvassing board for processing. A ballot is not considered rejected until the canvassing board has rejected the ballot individually, or the ballot was included in a batch or on a report of ballots that was rejected in its entirety by the canvassing board. All ballots shall be preserved in the same manner as valid ballots for that primary or election.

**Sec. 49.** RCW 29A.60.060 and 2003 c 111 s 1506 are each amended to read as follows:

After the close of the (polls, counties employing poll-site ballot counting devices may telephonically or electronically transmit the accumulated tally for each device to a central reporting location. Before making a telephonic or electronic transmission the precinct election officer must create a printed record of the results of the election for that poll site. During the canvassing period the results transmitted telephonically or electronically must be considered

unofficial until a complete reconciliation of the results has been performed. This reconciliation may be accomplished by a direct loading of) voting center at 8:00 p.m., the county auditor must directly load the results from ((the)) any direct recording electronic memory pack into the central accumulator((, or a comparison of the report produced at the poll site on election night with the results received by the central accumulating device)).

**Sec. 50.** RCW 29A.60.110 and 2003 c 111 s 1511 are each amended to read as follows:

Immediately after their tabulation, all ballots counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days or according to federal law, whichever is longer. ~~((All ballots tallied by poll-site ballot counting devices must be returned to the elections department in sealed ballot containers on election day. Counties composed entirely of islands or portions of counties composed of islands shall collect the ballots within twenty-four hours of the close of the polls.))~~

Ballots tabulated in poll-site ballot counting devices must be sealed by two of the election precinct officers at the polling place, and a log of the seal and the names of the people sealing the container must be completed. One copy of this log must be retained by the inspector, one a copy must be placed in the ballot transfer case, and one copy must be transported with the ballots to the elections department, where the seal number must be verified by the county auditor or a designated representative. Ballots may be transported by one election employee if the container is sealed at the poll and then verified when returned to the elections department. Auditors using poll-site ballot counting devices may conduct early pickup of counted ballots on election day.))

In the presence of major party observers who are available, ballots may be removed from the sealed containers at the elections department and consolidated into one sealed container for storage purposes. The containers may only be opened by the canvassing board as part of the canvass, or to conduct recounts, or under RCW 29A.60.170(3), or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record must be added to any other record of the canvassing process in that county.

**Sec. 51.** RCW 29A.60.120 and 2003 c 111 s 1512 are each amended to read as follows:

(1) ((The ballots picked up from the precincts during the polling hours may be counted only at the counting center before the polls have closed. Election returns from the count of these ballots must be held in secrecy until the polls have been closed.

(2) Upon breaking the seals and opening the ballot containers from the precincts,) All voted ballots must be manually inspected for damage, write-in votes, and incorrect or incomplete marks. If it is found that any ballot is damaged so that it cannot properly be counted by the vote tallying system, a true duplicate copy must be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All damaged ballots must be kept by the county auditor until sixty days after the primary or election or according to federal law, whichever is longer.

~~((3))~~ (2) The returns produced by the vote tallying system, to which have been added the counts of questioned ballots, and write-in votes, ~~((and absentee votes.))~~ constitute the official returns of the primary or election in that county.

**Sec. 52.** RCW 29A.60.160 and 2007 c 373 s 1 are each amended to read as follows:

(1) Except for an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the county auditor, as delegated by the county canvassing board, shall process ~~((absentee))~~ ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a

population of less than seventy-five thousand, if the county auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process absentee ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass.

**Sec. 53.** RCW 29A.60.160 and 2007 c 373 s 2 are each amended to read as follows:

(1) The county auditor, as delegated by the county canvassing board, shall process (~~(absentee)~~) ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process absentee ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass.

**Sec. 54.** RCW 29A.60.165 and 2006 c 209 s 4 and 2006 c 208 s 1 are each reenacted and amended to read as follows:

(1) If the voter neglects to sign the (~~(outside envelope of an absentee or provisional)~~) ballot declaration, the auditor shall notify the voter by first-class mail and advise the voter of the correct procedures for completing the unsigned (~~(affidavit)~~) declaration. If the (~~(absentee)~~) ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information. (~~(In order for the ballot to be counted, the voter must either:~~

— (a) Appear in person and sign the envelope no later than the day before the certification of the primary or election; or

— (b) Sign a copy of the envelope provided by the auditor, and return it to the auditor no later than the day before the certification of the primary or election.)

(2)(a) If the handwriting of the signature on (~~(an absentee or provisional ballot envelope)~~) a ballot declaration is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by first-class mail, enclosing a copy of the (~~(envelope affidavit)~~) declaration, and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the (~~(absentee or provisional)~~) ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information. (~~(In order for the ballot to be counted, the voter must either:~~

— (i) Appear in person and sign a new registration form no later than the day before the certification of the primary or election; or

— (ii) Sign a copy of the affidavit provided by the auditor and return it to the auditor no later than the day before the certification of the primary or election. The voter may enclose with the affidavit a photocopy of a valid government or tribal issued identification document that includes the voter's current signature. If the signature on the copy of the affidavit does not match the signature on file or the signature on the copy of the identification document, the voter must

~~appear in person and sign a new registration form no later than the day before the certification of the primary or election in order for the ballot to be counted.)~~

(b) If the signature on (~~(an absentee or provisional ballot envelope)~~) a ballot declaration is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on (~~(an absentee or provisional ballot envelope)~~) a ballot declaration is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

**Sec. 55.** RCW 29A.60.170 and 2007 c 373 s 3 are each amended to read as follows:

(1) At least twenty-eight days prior to any special election, general election, or primary, the county auditor shall request from the chair of the county central committee of each major political party a list of individuals who are willing to serve as observers. The county auditor has discretion to also request observers from any campaign or organization. The county auditor may delete from the lists names of those persons who indicate to the county auditor that they cannot or do not wish to serve as observers, and names of those persons who, in the judgment of the county auditor, lack the ability to properly serve as observers after training has been made available to them by the auditor.

(2) The counting center (~~(in a county using voting systems)~~) is under the direction of the county auditor and must be (~~(observed)~~) open to observation by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings must be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

((2) In counties in which ballots are not counted at the polling place, the official political party observers, upon mutual agreement, may request that a precinct be selected at random on receipt of the ballots from the polling place and that a manual count be made of the number of ballots and of the votes cast on any office or issue. The ballots for that precinct must then be counted by the vote tallying system, and this result will be compared to the results of the manual count. This may be done as many as three times during the tabulation of ballots on the day of the primary or election.

(3) In counties using poll-site ballot counting devices, the political party observers, upon mutual agreement, may choose as many as three precincts and request that a manual count be made of the number of ballots and the votes cast on any office or issue. The results of this count will be compared to the count of the precinct made by the poll-site ballot counting device. These selections must be made no later than thirty minutes after the close of the polls. The manual count must be completed within forty-eight hours after the close of the polls. The process must take place at a location designated by the county auditor for that purpose. The political party observers must receive timely notice of the time and location, and have the right to be present. However, the process must proceed as

scheduled if the observers are unable to attend.

(4) In counties voting entirely by mail,)) (3) A random check of the ballot counting equipment may be conducted upon mutual agreement of the political party observers or at the discretion of the county auditor. The random check procedures must be adopted by the county canvassing board prior to the processing of ballots. The random check process shall involve a comparison of a manual count to the machine count and may involve up to either three precincts or six batches depending on the ballot counting procedures in place in the county. The random check will be limited to one office or issue on the ballots in the precincts or batches that are selected for the check. The selection of the precincts or batches to be checked must be selected according to procedures established by the county canvassing board and the check must be completed no later than forty-eight hours after election day.

**Sec. 56.** RCW 29A.60.180 and 2003 c 111 s 1518 are each amended to read as follows:

Each registered voter casting ((an absentee)) a valid ballot will be credited with voting on his or her voter registration record. ((Absentee ballots must be retained for the same length of time and in the same manner as ballots cast at the precinct polling places.))

**Sec. 57.** RCW 29A.60.190 and 2006 c 344 s 16 are each amended to read as follows:

(1) Except as provided by subsection (3) of this section, fifteen days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each ((absentee)) ballot that was returned before ((the closing of the polls)) 8:00 p.m. on the day of the special election, general election, or primary, and each ((absentee)) ballot bearing a postmark on or before the date of the ((primary or)) special election, general election, or primary and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house of representatives.

(3) On or before the thirtieth day after an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the canvassing board shall complete the canvass and certify the results.

**Sec. 58.** RCW 29A.60.190 and 2006 c 344 s 17 are each amended to read as follows:

(1) Fifteen days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each ((absentee)) ballot that was returned before ((the closing of the polls)) 8:00 p.m. on the day of the special election, general election, or primary, and each ((absentee)) ballot bearing a postmark on or before the date of the ((primary or)) special election, general election, or primary and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house of representatives.

**Sec. 59.** RCW 29A.60.195 and 2005 c 243 s 9 are each amended to read as follows:

Before certification of the primary or election, the county auditor must examine and investigate all received provisional ballots to determine whether the ballot can be counted. The auditor shall provide the disposition of the provisional ballot and, if the ballot was not counted, the reason why it was not counted, on a free access system such as a toll-free telephone number, web site, mail, or other

means. The auditor must notify the voter in accordance with RCW 29A.60.165 when the ((envelope)) declaration is unsigned or when the signatures do not match.

**Sec. 60.** RCW 29A.60.200 and 2003 c 111 s 1520 are each amended to read as follows:

Before canvassing the returns of a primary or election, the chair of the county legislative authority or the chair's designee shall administer an oath to the county auditor or the auditor's designee attesting to the authenticity of the information presented to the canvassing board. This oath must be signed by the county auditor or designee and filed with the returns of the primary or election.

The county canvassing board shall proceed to verify the results from the ((precincts and the absentee)) ballots received. The board shall execute a certificate of the results of the primary or election signed by all members of the board or their designees. Failure to certify the returns, if they can be ascertained with reasonable certainty, is a crime under RCW 29A.84.720.

**Sec. 61.** RCW 29A.60.230 and 2003 c 111 s 1523 are each amended to read as follows:

((4)) Immediately after the official results of a state primary or general election in a county are ascertained, the county auditor or other election officer shall make an abstract of the number of registered voters in each precinct and of all the votes cast in the county at such state primary or general election for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The cumulative report of the election and a copy of the certificate of the election must be transmitted to the secretary of state immediately ((through electronic means and mailed with the abstract of votes no later than the next business day following the certification by the county canvassing board.

— (2) After each general election, the county auditor or other election officer shall provide to the secretary of state a report of the number of absentee ballots cast in each precinct for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The report may be included in the abstract required by this section or may be transmitted to the secretary of state separately, but in no event later than March 31st of the year following the election. Absentee ballot results may be incorporated into votes east at the polls for each precinct or may be reported separately on a precinct by precinct basis.

— (3) If absentee ballot results are not incorporated into votes cast at the polls,)) The county auditor or other election official may aggregate results from more than one precinct if the auditor, pursuant to rules adopted by the secretary of state, finds that reporting a single precinct's ((absentee)) ballot results would jeopardize the secrecy of a person's ballot. To the extent practicable, precincts for which ((absentee)) results are aggregated must be contiguous.

**Sec. 62.** RCW 29A.60.235 and 2009 c 369 s 41 are each amended to read as follows:

((4)) The county auditor shall prepare, make publicly available at the auditor's office or on the auditor's web site, and submit at the time of certification an election reconciliation report that discloses the following information:

- ((a)) The number of registered voters;
- ((b)) The number of ballots counted;
- ((c)) The number of provisional ballots issued;
- ((d)) The number of provisional ballots counted;
- ((e)) The number of provisional ballots rejected;
- ((f)) The number of absentee ballots issued;
- ((g)) The number of absentee ballots counted;
- ((h)) The number of absentee ballots rejected;
- ((i)) The number of federal write-in ballots counted;
- ((j)) The number of overseas and service ballots issued;
- ((k)) The number of overseas and service ballots counted; and

(1) The number of overseas and service ballots rejected.

(2) The county auditor shall prepare and make publicly available at the auditor's office or on the auditor's web site within thirty days of certification a final election reconciliation report that discloses the following information:

- (a) The number of registered voters;
- (b) The total number of voters credited with voting;
- (c) The number of poll voters credited with voting;
- (d) The number of provisional voters credited with voting;
- (e) The number of absentee voters credited with voting;
- (f) The number of federal write-in voters credited with voting;
- (g) The number of overseas and service voters credited with

voting;

(h) The total number of voters credited with voting even though their ballots were postmarked after election day and were not counted; and

(i)) (1) The number of registered voters;

(2) The number of ballots issued;

(3) The number of ballots received;

(4) The number of ballots counted;

(5) The number of ballots rejected;

(6) The number of provisional ballots issued;

(7) The number of provisional ballots received;

(8) The number of provisional ballots counted;

(9) The number of provisional ballots rejected;

(10) The number of federal write-in ballots received;

(11) The number of federal write-in ballots counted;

(12) The number of federal write-in ballots rejected;

(13) The number of overseas and service ballots issued;

(14) The number of overseas and service ballots received;

(15) The number of overseas and service ballots counted;

(16) The number of overseas and service ballots rejected;

(17) The number of voters credited with voting; and

(18) Any other information the auditor or secretary of state deems necessary to reconcile the number of ballots counted with the number of voters credited with voting.

((3) The county auditor may also prepare such reports for jurisdictions located, in whole or in part, in the county.)

**Sec. 63.** RCW 29A.64.041 and 2004 c 271 s 179 are each amended to read as follows:

(1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

(Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots.) The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The observers may not make a record of the names, addresses, or other information on the ballots, ~~((poll books))~~ declarations, ((or applications for absentee ballots)) or lists of voters unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process.

**Sec. 64.** RCW 29A.68.020 and 2007 c 374 s 4 are each amended to read as follows:

Any of the following causes may be asserted by a registered voter to challenge the right to assume office of a candidate declared elected to that office:

(1) For misconduct on the part of any member of any precinct election board involved therein;

(2) Because the person whose right is being contested was not at the time the person was declared elected eligible to that office;

(3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, the conviction not having been reversed nor the person's civil rights restored after the conviction;

(4) Because the person whose right is being contested gave a bribe or reward to a voter or to an ~~((inspector or judge of))~~ election officer for the purpose of procuring the election, or offered to do so;

(5) On account of illegal votes.

(a) Illegal votes include but are not limited to the following:

(i) More than one vote cast by a single voter;

(ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.

(b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and 29A.08.820.

All election contests must proceed under RCW 29A.68.011.

**Sec. 65.** RCW 29A.68.070 and 2003 c 111 s 1707 are each amended to read as follows:

No irregularity or improper conduct in the proceedings of any ~~((election))~~ county canvassing board or any member of the board amounts to such malconduct as to annul or set aside any election unless the irregularity or improper conduct was such as to procure the person whose right to the office may be contested, to be declared duly elected although the person did not receive the highest number of legal votes.

**Sec. 66.** RCW 29A.68.080 and 2003 c 111 s 1708 are each amended to read as follows:

When any election for an office exercised in and for a county is contested on account of any malconduct on the part of ~~((any election))~~ a county canvassing board, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts will change the result as to such office in the remaining vote of the county.

**Sec. 67.** RCW 29A.84.020 and 2003 c 111 s 2102 are each amended to read as follows:

Every officer who willfully violates RCW 29A.56.110 through 29A.56.270, for the violation of which no penalty is prescribed in this title or who willfully fails to comply with the provisions of ~~((this chapter))~~ RCW 29A.56.110 through 29A.56.270 is guilty of a gross misdemeanor.

**Sec. 68.** RCW 29A.84.050 and 2005 c 243 s 23 are each amended to read as follows:

(1) A person who knowingly destroys, alters, defaces, conceals, or discards a completed voter registration form or signed ~~((absentee or provisional ballot signature affidavit))~~ ballot declaration is guilty of a gross misdemeanor. This section does not apply to ~~((4))~~ (a) the voter who completed the ~~((voter registration))~~ form or declaration, or ~~((2))~~ (b) a county auditor ~~((or registration assistant))~~ who acts as authorized by ~~((voter registration))~~ law.

(2) Any person who intentionally fails to return another person's completed voter registration form or signed ballot declaration to the proper state or county elections office by the applicable deadline is guilty of a gross misdemeanor.

**Sec. 69.** RCW 29A.84.510 and 2003 c 111 s 2121 are each amended to read as follows:

(1) ~~((On the day of any primary or general or special election))~~ During the voting period that begins eighteen days before and ends



the day of a special election, general election, or primary, no person may, within a ((polling place, or in any public area within three hundred feet of any entrance to such polling place)) voting center:

(a) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;  
 (b) Circulate cards or handbills of any kind;  
 (c) Solicit signatures to any kind of petition; or  
 (d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the ((polling place)) voting center.

(2) No person may obstruct the doors or entries to a building in which a ((polling place)) voting center or ballot drop location is located or prevent free access to and from any ((polling place)) voting center or ballot drop location. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction, and may arrest any person creating such obstruction.

(3) ((No person may:

(a) Except as provided in RCW 29A.44.050, remove any ballot from the polling place before the closing of the polls; or  
 (b) Solicit any voter to show his or her ballot.

(4) No person other than an inspector or judge of election may receive from any voter a voted ballot or deliver a blank ballot to such elector.

(5)) Any violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution.

**Sec. 70.** RCW 29A.84.520 and 2003 c 111 s 2122 are each amended to read as follows:

Any election officer who does any electioneering ((on primary or election day)) during the voting period that begins eighteen days before and ends the day of a special election, general election, or primary, is guilty of a misdemeanor, and upon conviction must be fined in any sum not exceeding one hundred dollars and pay the costs of prosecution.

**Sec. 71.** RCW 29A.84.530 and 2003 c 111 s 2123 are each amended to read as follows:

Deliberately impeding other voters from casting their votes by refusing to leave a voting booth or voting device is a misdemeanor and is subject to the penalties provided in chapter 9A.20 RCW. ((The precinct)) Election officers may provide assistance in the manner provided by ((RCW 29A.44.240)) section 43 of this act to any voter who requests it.

**Sec. 72.** RCW 29A.84.540 and 2003 c 111 s 2124 are each amended to read as follows:

Any person who, without lawful authority, removes a ballot from a ((polling place)) voting center or ballot drop location is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**Sec. 73.** RCW 29A.84.545 and 2005 c 242 s 6 are each amended to read as follows:

Anyone who, without authorization, removes from a ((polling place)) voting center a paper record produced by ((an)) a direct recording electronic voting device is guilty of a class C felony punishable under RCW 9A.20.021.

**Sec. 74.** RCW 29A.84.550 and 2003 c 111 s 2125 are each amended to read as follows:

Any person who willfully defaces, removes, or destroys any of the supplies or materials that the person knows are intended both for use in a ((polling place)) voting center and for enabling a voter to prepare his or her ballot is guilty of a class C felony punishable under RCW 9A.20.021.

**Sec. 75.** RCW 29A.84.655 and 2003 c 111 s 2132 are each amended to read as follows:

Any ((precinct)) election officer ((who knowingly permits any voter to cast a second vote at any primary or general or special

election, or knowingly permits any person not a qualified voter to vote at any primary or general or special election)) who intentionally tabulates or causes to be tabulated, through any act of omission, an invalid ballot when the person has actual knowledge that the ballot is invalid, is guilty of a class C felony punishable under RCW 9A.20.021.

**Sec. 76.** RCW 29A.84.680 and 2003 c 111 s 2136 and 2003 c 53 s 179 are each reenacted and amended to read as follows:

(1) A person who willfully violates any provision of chapter 29A.40 RCW regarding the assertion or declaration of qualifications to receive or cast ((an absentee)) a ballot or unlawfully casts a ((vote by absentee)) ballot is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Except as provided in this chapter, a person who willfully violates any other provision of chapter 29A.40 RCW is guilty of a misdemeanor.

**Sec. 77.** RCW 29A.84.730 and 2003 c 111 s 2139 are each amended to read as follows:

(1) In any location in which ballots are counted, no person authorized by law to be present while votes are being counted may divulge any results of the count of the ballots at any time prior to ((the closing of the polls for that)) 8:00 p.m. on the day of the primary or special or general election.

(2) A violation of this section is a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**Sec. 78.** RCW 27.12.370 and 2006 c 344 s 19 are each amended to read as follows:

The county legislative authority or authorities shall by resolution call a special election to be held in such city or town at the next special election date according to RCW 29A.04.321, and shall cause notice of such election to be given as provided for in ((RCW 29A.52.351)) section 45 of this act.

The election on the annexation of the city or town into the library district shall be conducted by the auditor of the county or counties in which the city or town is located in accordance with the general election laws of the state and the results thereof shall be canvassed by the canvassing board of the county or counties. No person shall be entitled to vote at such election unless he or she is registered to vote in said city or town for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall the city or town of . . . . . be annexed to and be a part of . . . . . library district?

YES

NO

If a majority of the persons voting on the proposition shall vote in favor thereof, the city or town shall thereupon be annexed and shall be a part of such library district.

**Sec. 79.** RCW 36.83.110 and 1996 c 292 s 4 are each amended to read as follows:

Any registered voter residing within the boundaries of the road and bridge service district may file a referendum petition to call an election to retain any or all commissioners. Any referendum petition to call such election shall be filed with the county auditor no later than one year before the end of a commissioner's term. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question: "Shall (name of commissioner) be retained as a road and bridge service district commissioner?" and the question shall be posed separately for each

commissioner. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the service district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the service district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor. ~~((The special election may be conducted by mail ballot as provided for in \*chapter 29.36 RCW.))~~

The office of any commissioner for whom there is not a majority vote to retain shall be declared vacant.

**Sec. 80.** RCW 36.93.030 and 2006 c 344 s 28 are each amended to read as follows:

(1) There is hereby created and established in each county with a population of two hundred ten thousand or more a board to be known and designated as a "boundary review board".

(2) A boundary review board may be created and established in any other county in the following manner:

(a) The county legislative authority may, by majority vote, adopt a resolution establishing a boundary review board; or

(b) A petition seeking establishment of a boundary review board signed by qualified electors residing in the county equal in number to at least five percent of the votes cast in the county at the last county general election may be filed with the county auditor.

Upon the filing of such a petition, the county auditor shall examine the same and certify to the sufficiency of the signatures thereon. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days after the filing of such petition, the county auditor shall transmit the same to the county legislative authority, together with his or her certificate of sufficiency.

After receipt of a valid petition for the establishment of a boundary review board, the county legislative authority shall submit the question of whether a boundary review board should be established to the electorate at the next primary or general election according to RCW 29A.04.321. Notice of the election shall be given as provided in ~~((RCW 29A.52.351))~~ section 45 of this act and shall include a clear statement of the proposal to be submitted.

If a majority of the persons voting on the proposition shall vote in favor of the establishment of the boundary review board, such board shall thereupon be deemed established.

**Sec. 81.** RCW 40.24.060 and 2008 c 18 s 4 are each amended to read as follows:

((A program participant who is otherwise qualified to vote may register as an ongoing absentee voter under RCW 29A.40.040.)) The county auditor shall ((transmit the absentee)) mail a ballot to ((the)) a program participant qualified and registered to vote at the mailing address provided. Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public.

**Sec. 82.** RCW 52.04.071 and 2009 c 115 s 2 are each amended to read as follows:

The county legislative authority or authorities shall by resolution call a special election to be held in the city, partial city as set forth in RCW 52.04.061(2), or town and in the fire protection district at the next date according to RCW 29A.04.321, and shall cause notice of the election to be given as provided for in ~~((RCW 29A.52.351))~~ section 45 of this act.

The election on the annexation of the city, partial city as set forth in RCW 52.04.061(2), or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city,

partial city as set forth in RCW 52.04.061(2), or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city, partial city as set forth in RCW 52.04.061(2), or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city, partial city as set forth in RCW 52.04.061(2), or town of . . . . . be annexed to and be a part of . . . . . fire protection district?"

YES . . . . .  
NO . . . . ."

If a majority of the persons voting on the proposition in the city, partial city as set forth in RCW 52.04.061(2), or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city, partial city as set forth in RCW 52.04.061(2), or town shall be annexed and shall be a part of the fire protection district.

**Sec. 83.** RCW 85.38.125 and 1991 c 349 s 15 are each amended to read as follows:

(1) If a special district has less than five hundred qualified voters, then the special district must contract with the county auditor to conduct the special district elections. ~~((The county auditor has the discretion as to whether to conduct the election by mail.))~~

(2) If a special district has at least five hundred qualified voters, the special district may ~~((contract with the county auditor to staff the voting site during the election or))~~ contract with the county auditor to conduct the election ~~((by mail))~~. A special district with at least five hundred qualified voters may also choose to conduct its own elections. A special district that conducts its own elections must enter into an agreement with the county auditor that specifies the responsibilities of both parties.

~~((3))~~ If the county auditor conducts a special district election by mail, then the provisions of ~~\*chapter 29.36 RCW~~ which govern elections by mail, except for the requirements of ~~\*\*RCW 29.36.120~~, shall apply.)

**Sec. 84.** RCW 90.72.040 and 1997 c 447 s 20 are each amended to read as follows:

(1) The county legislative authority may create a shellfish protection district on its own motion or by submitting the question to the voters of the proposed district and obtaining the approval of a majority of those voting. The boundaries of the district shall be determined by the legislative authority. The legislative authority may create more than one district. A district may include any area or areas within the county, whether incorporated or unincorporated. Counties shall coordinate and cooperate with cities, towns, and water-related special districts within their boundaries in establishing shellfish protection districts and carrying out shellfish protection programs. Where a portion of the proposed district lies within an incorporated area, the county shall develop procedures for the participation of the city or town in the determination of the boundaries of the district and the administration of the district, including funding of the district's programs. The legislative authority of more than one county may by agreement provide for the creation of a district including areas within each of those counties. County legislative authorities are encouraged to coordinate their plans and programs to protect shellfish growing areas, especially where shellfish growing areas are located within the boundaries of more than one county. The legislative authority or authorities creating a district may abolish a shellfish protection district on its or their own motion or by submitting the question to the voters of the district and obtaining the approval of a majority of those voting.

(2) If the county legislative authority creates a shellfish protection district by its own motion, any registered voter residing within the boundaries of the shellfish protection district may file a referendum petition to repeal the ordinance that created the district. Any referendum petition to repeal the ordinance creating the shellfish protection district shall be filed with the county auditor within seven days of passage of the ordinance. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in creation of the shellfish protection district and a negative answer to the question and a negative vote on the measure results in the shellfish protection district not being created. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the shellfish protection district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title and full text of the measure to be referred. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the shellfish protection district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor. ~~(The special election may be conducted by mail ballot as provided for in \*chapter 29.36 RCW.)~~

(3) The county legislative authority shall not impose fees, rates, or charges for shellfish protection district programs upon properties on which fees, rates, or charges are imposed under chapter 36.89 or 36.94 RCW for substantially the same programs and services.

**NEW SECTION. Sec. 85.** The county auditor of any county that maintained poll sites as of the effective date of this act shall notify by mail each registered poll voter that all future primaries, special elections, and general elections will be conducted by mail.

**NEW SECTION. Sec. 86.** The following acts or parts of acts are each repealed:

- (1) RCW 29A.04.049 (Election board) and 2003 c 111 s 109 & 1986 c 167 s 1;
- (2) RCW 29A.04.115 (Poll-site ballot counting devices) and 2003 c 111 s 120;
- (3) RCW 29A.04.128 (Primary) and 2004 c 271 s 152;
- (4) RCW 29A.08.430 (Transfer on day of primary, special election, or general election) and 2009 c 369 s 24, 2004 c 267 s 123, & 2003 c 111 s 230;
- (5) RCW 29A.12.090 (Single district and precinct) and 2003 c 111 s 309;
- (6) RCW 29A.16.010 (Intent--Duties of county auditors) and 2004 c 267 s 315, 2003 c 111 s 401, 1999 c 298 s 13, 1985 c 205 s 1, & 1979 ex.s. c 64 s 1;
- (7) RCW 29A.16.020 (Alternative polling places or procedures) and 2003 c 111 s 402, 1999 c 298 s 15, & 1985 c 205 s 5;
- (8) RCW 29A.16.030 (Costs for modifications--Alternatives--Election costs) and 2003 c 111 s 403, 1999 c 298 s 20, & 1985 c 205 s 12;
- (9) RCW 29A.16.060 (Combining or dividing precincts, election boards) and 2003 c 111 s 406;
- (10) RCW 29A.16.110 (Polling place--May be located outside precinct) and 2003 c 111 s 407 & 1965 c 9 s 29.48.005;
- (11) RCW 29A.16.120 (Polling place--Use of county, municipality, or special district facilities) and 2003 c 111 s 408;
- (12) RCW 29A.16.130 (Public buildings as polling places) and 2004 c 267 s 316 & 2003 c 111 s 409;

(13) RCW 29A.16.140 (Inaccessible polling places--Auditors' list) and 2003 c 111 s 410;

(14) RCW 29A.16.150 (Polling places--Accessibility required, exceptions) and 2003 c 111 s 411;

(15) RCW 29A.16.160 (Review by and recommendations of disabled voters) and 2003 c 111 s 412;

(16) RCW 29A.16.170 (County auditors--Notice of accessibility) and 2003 c 111 s 413;

(17) RCW 29A.24.151 (Notice of void in candidacy) and 2004 c 271 s 163;

(18) RCW 29A.24.161 (Filings to fill void in candidacy--How made) and 2004 c 271 s 164;

(19) RCW 29A.40.030 (Request on behalf of family member) and 2003 c 111 s 1003;

(20) RCW 29A.40.040 (Ongoing status--Request--Termination) and 2003 c 111 s 1004;

(21) RCW 29A.40.061 (Issuance of ballot and other materials) and 2009 c 369 s 38 & 2004 c 271 s 134;

(22) RCW 29A.40.061 (Issuance of ballot and other materials) and 2009 c 415 s 6 & 2004 c 271 s 134;

(23) RCW 29A.40.080 (Delivery of ballot, qualifications for) and 2003 c 111 s 1008;

(24) RCW 29A.40.120 (Report of count) and 2003 c 111 s 1012;

(25) RCW 29A.40.140 (Challenges) and 2006 c 320 s 8 & 2003 c 111 s 1014;

(26) RCW 29A.44.010 (Interference with voter prohibited) and 2003 c 111 s 1101;

(27) RCW 29A.44.020 (List of who has and who has not voted) and 2003 c 111 s 1102, 1977 ex.s. c 361 s 83, & 1965 c 9 s 29.51.125;

(28) RCW 29A.44.030 (Taking papers into voting booth) and 2004 c 267 s 317 & 2003 c 111 s 1103;

(29) RCW 29A.44.040 (Official ballots--Vote only once--Incorrectly marked ballots) and 2004 c 267 s 318 & 2003 c 111 s 1104;

(30) RCW 29A.44.045 (Electronic voting devices--Paper records) and 2005 c 242 s 2;

(31) RCW 29A.44.050 (Ballot pick up, delivery, and transportation) and 2003 c 111 s 1105;

(32) RCW 29A.44.060 (Voting booths) and 2003 c 111 s 1106;

(33) RCW 29A.44.070 (Opening and closing polls) and 2003 c 111 s 1107;

(34) RCW 29A.44.080 (Polls open continuously--Announcement of closing) and 2003 c 111 s 1108;

(35) RCW 29A.44.090 (Double voting prohibited) and 2003 c 111 s 1109, 1987 c 346 s 13, & 1965 c 9 s 29.36.050;

(36) RCW 29A.44.110 (Delivery of supplies) and 2003 c 111 s 1110;

(37) RCW 29A.44.120 (Delivery of precinct lists to polls) and 2003 c 111 s 1111;

(38) RCW 29A.44.130 (Additional supplies for paper ballots) and 2003 c 111 s 1112 & 1977 ex.s. c 361 s 82;

(39) RCW 29A.44.140 (Voting and registration instructions and information) and 2003 c 111 s 1113;

(40) RCW 29A.44.150 (Time for arrival of officers) and 2003 c 111 s 1114;

(41) RCW 29A.44.160 (Inspection of voting equipment) and 2003 c 111 s 1115;

(42) RCW 29A.44.170 (Flag) and 2003 c 111 s 1116;

(43) RCW 29A.44.180 (Opening the polls) and 2003 c 111 s 1117;

(44) RCW 29A.44.190 (Voting devices--Periodic examination) and 2003 c 111 s 1118;

(45) RCW 29A.44.201 (Issuing ballot to voter--Challenge) and 2004 c 271 s 136;

(46) RCW 29A.44.205 (Identification required) and 2005 c 243 s 7;

(47) RCW 29A.44.207 (Provisional ballots) and 2005 c 243 s 6;  
 (48) RCW 29A.44.210 (Signature required--Procedure if voter unable to sign name) and 2003 c 111 s 1120, 1990 c 59 s 41, 1971 ex.s. c 202 s 41, 1967 ex.s. c 109 s 9, 1965 ex.s. c 156 s 5, & 1965 c 9 s 29.51.060;  
 (49) RCW 29A.44.221 (Casting vote) and 2004 c 271 s 137;  
 (50) RCW 29A.44.225 (Voter using electronic voting device) and 2005 c 242 s 4;  
 (51) RCW 29A.44.231 (Record of participation) and 2004 c 271 s 138;  
 (52) RCW 29A.44.240 (Disabled voters) and 2003 c 111 s 1123, 2003 c 53 s 180, 1981 c 34 s 1, 1965 ex.s. c 101 s 17, & 1965 c 9 s 29.51.200;  
 (53) RCW 29A.44.250 (Tabulation of paper ballots before close of polls) and 2003 c 111 s 1124 & 1990 c 59 s 54;  
 (54) RCW 29A.44.260 (Voters in polling place at closing time) and 2003 c 111 s 1125;  
 (55) RCW 29A.44.265 (Provisional ballot after polls close) and 2004 c 267 s 501;  
 (56) RCW 29A.44.270 (Unused ballots) and 2003 c 111 s 1126, 1990 c 59 s 52, 1977 ex.s. c 361 s 84, 1965 ex.s. c 101 s 6, & 1965 c 9 s 29.54.010;  
 (57) RCW 29A.44.280 (Duties of election officers after unused ballots secure) and 2003 c 111 s 1127 & 1990 c 59 s 53;  
 (58) RCW 29A.44.290 (Return of precinct lists after election--Public records) and 2003 c 111 s 1128;  
 (59) RCW 29A.44.310 (Initialization) and 2003 c 111 s 1129;  
 (60) RCW 29A.44.320 (Delivery and sealing) and 2003 c 111 s 1130;  
 (61) RCW 29A.44.330 (Memory packs) and 2003 c 111 s 1131;  
 (62) RCW 29A.44.340 (Incorrectly marked ballots) and 2003 c 111 s 1132;  
 (63) RCW 29A.44.350 (Failure of device) and 2004 c 267 s 320 & 2003 c 111 s 1133;  
 (64) RCW 29A.44.410 (Appointment of judges and inspector) and 2003 c 111 s 1134, 1991 c 106 s 1, 1983 1st ex.s. c 71 s 7, 1965 ex.s. c 101 s 1, & 1965 c 9 s 29.45.010;  
 (65) RCW 29A.44.420 (Appointment of clerks--Party representation-- Hour to report) and 2003 c 111 s 1135, 1965 ex.s. c 101 s 2, & 1965 c 9 s 29.45.020;  
 (66) RCW 29A.44.430 (Nomination) and 2003 c 111 s 1136, 1991 c 106 s 2, 1987 c 295 s 16, 1965 ex.s. c 101 s 3, & 1965 c 9 s 29.45.030;  
 (67) RCW 29A.44.440 (Vacancies--How filled--Inspector's authority) and 2003 c 111 s 1137;  
 (68) RCW 29A.44.450 (One set of precinct election officers, exceptions--Counting board--Receiving board) and 2003 c 111 s 1138, 1994 c 223 s 91, 1973 c 102 s 2, 1965 ex.s. c 101 s 4, & 1965 c 9 s 29.45.050;  
 (69) RCW 29A.44.460 (Duties--Generally) and 2003 c 111 s 1139;  
 (70) RCW 29A.44.470 (Application to other primaries or elections) and 2003 c 111 s 1140;  
 (71) RCW 29A.44.480 (Inspector as chair--Authority) and 2003 c 111 s 1141 & 1965 c 9 s 29.45.070;  
 (72) RCW 29A.44.490 (Oaths of officers required) and 2003 c 111 s 1142;  
 (73) RCW 29A.44.500 (Oath of inspectors, form) and 2003 c 111 s 1143;  
 (74) RCW 29A.44.510 (Oath of judges, form) and 2003 c 111 s 1144;  
 (75) RCW 29A.44.520 (Oath of clerks, form) and 2003 c 111 s 1145;  
 (76) RCW 29A.44.530 (Compensation) and 2003 c 111 s 1146, 1971 ex.s. c 124 s 2, & 1965 c 9 s 29.45.120;

(77) RCW 29A.46.010 ("Disability access voting location.") and 2004 c 267 s 301;  
 (78) RCW 29A.46.020 ("Disability access voting period.") and 2006 c 207 s 5 & 2004 c 267 s 302;  
 (79) RCW 29A.46.030 ("In-person disability access voting.") and 2004 c 267 s 303;  
 (80) RCW 29A.46.110 (When allowed--Multiple voting prevention) and 2006 c 207 s 6 & 2004 c 267 s 304;  
 (81) RCW 29A.46.120 (Locations and hours) and 2004 c 267 s 305;  
 (82) RCW 29A.46.130 (Compliance with federal and state requirements) and 2004 c 267 s 306;  
 (83) RCW 29A.48.010 (Mail ballot counties and precincts) and 2009 c 103 s 1, 2005 c 241 s 1, & 2004 c 266 s 14;  
 (84) RCW 29A.48.020 (Special elections) and 2004 c 266 s 15;  
 (85) RCW 29A.48.030 (Odd-year primaries) and 2003 c 111 s 1203;  
 (86) RCW 29A.48.040 (Depositing ballots--Replacement ballots) and 2003 c 111 s 1204, 2001 c 241 s 18, & 1983 1st ex.s. c 71 s 3;  
 (87) RCW 29A.48.050 (Return of voted ballot) and 2006 c 206 s 8 & 2003 c 111 s 1205;  
 (88) RCW 29A.48.060 (Ballot contents--Counting) and 2003 c 111 s 1206, 2001 c 241 s 20, 1993 c 417 s 5, 1990 c 59 s 76, 1983 1st ex.s. c 71 s 5, & 1967 ex.s. c 109 s 7;  
 (89) RCW 29A.52.311 (Notice of primary) and 2004 c 271 s 145;  
 (90) RCW 29A.52.351 (Notice of election) and 2004 c 271 s 175;  
 (91) RCW 29A.60.030 (Tabulation continuous) and 2004 c 266 s 16 & 2003 c 111 s 1503;  
 (92) RCW 29A.60.080 (Sealing of voting devices-Exceptions) and 2004 c 266 s 17;  
 (93) RCW 29A.84.525 (Electioneering by disability access voting election officer) and 2004 c 267 s 309;  
 (94) RCW 29A.84.670 (Unlawful acts by voters--Penalty) and 2003 c 53 s 181 & 1965 c 9 s 29.51.230;  
 (95) RCW 29A.84.670 (Unlawful acts by voters) and 2003 c 111 s 2134 & 1965 c 9 s 29.51.230; and  
 (96) RCW 29A.84.740 (Returns and posted copy of results--Tampering with) and 2003 c 111 s 2140.  
**NEW SECTION. Sec. 87.** RCW 29A.46.260 is recodified as a section in chapter 29A.04 RCW.  
**NEW SECTION. Sec. 88.** Sections 53 and 58 of this act take effect July 1, 2013.  
**NEW SECTION. Sec. 89.** Sections 52 and 57 of this act expire July 1, 2013."  
 Correct the title.

Representative Taylor spoke in favor of the adoption of the amendment.

Representative Hunt spoke against the adoption of the amendment.

Amendment (462) was not adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Hunt, Green and Roberts spoke in favor of the passage of the bill.

Representatives Taylor, Zeiger, Angel, Armstrong, Dammeier, Pearson, McCune, Orcutt and Schmick 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 Senate Bill No. 5124.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 5124, and the bill passed the House by the following vote: Yeas, 52; Nays, 43; Absent, 0; Excused, 2.

Voting yea: Representatives Anderson, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Frockt, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jinkins, Kagi, Kenney, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Probst, Reykdal, Roberts, Rolfes, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege and Mr. Speaker.

Voting nay: Representatives Ahern, Alexander, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Johnson, Kelley, Kirby, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Excused: Representatives Appleton and Morris.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5124, having received the necessary constitutional majority, was declared passed.

**ENGROSSED SUBSTITUTE SENATE BILL NO. 5747, by Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Hewitt, Kohl-Welles and Conway)**

**Concerning Washington horse racing funds.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Hunt, Taylor and Nealey spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 5747.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 5747, and the bill passed the House by the following vote: Yeas, 93; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Representatives Ahern, Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Blake, Buys, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Frockt, Goodman, Green, Haigh, Haler, Hargrove, Harris, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Klippert, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Overstreet, Parker, Pearson, Pedersen, Pettigrew, Probst, Reykdal, Rivers, Roberts, Rodne, Rolfes, Ross, Ryu, Santos, Schmick, Seaquist,

Sells, Shea, Short, Smith, Springer, Stanford, Sullivan, Takko, Taylor, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Zeiger and Mr. Speaker.

Voting nay: Representatives Hasegawa and McCune.

Excused: Representatives Appleton and Morris.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5747, having received the necessary constitutional majority, was declared passed.

**HOUSE BILL NO. 1175, by Representatives Clibborn, Armstrong, Liias and Billig**

**Making 2011-13 transportation appropriations. Revised for 1st Substitute: Making transportation appropriations for the 2009-2011 and 2011-2013 fiscal biennia.**

The bill was read the second time.

There being no objection, Substitute House Bill No. 1175 was substituted for House Bill No. 1175 and the substitute bill was placed on the second reading calendar.

SUBSTITUTE HOUSE BILL NO. 1175 was read the second time.

With the consent of the house, amendments (449), (474), (467), (463) and (465) were withdrawn.

Representative Hasegawa moved the adoption of amendment (469).

On page 9, beginning on line 2, after "crossing," strike "At a minimum, for each project the study must evaluate whether public-private partnerships are in the public interest, including the advantage and disadvantage of risk allocation and the effects of private versus public financing on the state's bonding capacity, and the study must identify the funding models that are most advantageous to the state." and insert "At a minimum, the study must define the public interest for each of the projects, and it must evaluate for each project the possibility of retention of public ownership of the asset, the lowest cost and best-value model for the project, and the process that would allow for the most transparency during the negotiation of terms of any public-private partnership. The study must evaluate whether public-private partnerships serve the defined public interest, including the advantage and disadvantage of risk allocation, the effects of private versus public financing on the state's bonding capacity, the state's ability to retain public ownership of the asset, and the state's ability to oversee the private entity's management of the asset. In addition, the study must identify the funding models that best protect the defined public interest."

Representative Hasegawa spoke in favor of the adoption of the amendment.

Amendment (469) was adopted.

Representative Armstrong moved the adoption of amendment (450).

On page 9, beginning on line 30, strike all of subsections (1) and (2) and insert the following:

"(1) Consistent with RCW 43.135.055, 47.60.290, and 47.60.315, during the 2011-2013 fiscal biennium, the legislature authorizes the transportation commission to periodically review and, if necessary, adjust the schedule of fares for the Washington state ferry system

only in amounts not greater than those sufficient to generate the amount of revenue required by the biennial transportation budget. When adjusting ferry fares, the commission must consider input from affected ferry users by public hearing and by review with the affected ferry advisory committees, in addition to the data gathered from the current ferry user survey.

(2) Consistent with RCW 43.135.055 and 47.46.100, during the 2011-2013 fiscal biennium, the legislature authorizes the transportation commission to periodically review and, if necessary, adjust the schedule of toll charges applicable to the Tacoma Narrows bridge only in amounts not greater than those sufficient to support (a) any required costs for operating and maintaining the toll bridge, including the cost of insurance, (b) any amount required by law to meet the redemption of bonds and applicable interest payments, and (c) repayment of the motor vehicle fund."

Representatives Armstrong and Clibborn spoke in favor of the adoption of the amendment.

Amendment (450) was adopted.

Representative Dahlquist moved the adoption of amendment (468).

On page 15, line 14, decrease the High Occupancy Toll Lanes Operations Account--State Appropriation by \$766,000

On page 15, line 22, correct the total

On page 80, beginning on line 28, strike all of section 714

Re-number the remaining sections consecutively and correct any internal references accordingly. Correct the title.

Representatives Dahlquist, Dahlquist (again) and Orcutt spoke in favor of the adoption of the amendment.

Representatives Clibborn and Upthegrove spoke against the adoption of the amendment.

Division was demanded and the demand was sustained. The Speaker (Representative Moeller presiding) divided the House. The result was 45 - YEAS; 50 - NAYS.

Amendment (468) was not adopted.

Representative Angel moved the adoption of amendment (456).

On page 16, after line 19, insert the following:

"(5) It is the intent of the legislature that transitioning to a statewide tolling operations center and preparing for all-electronic tolling on certain toll facilities will have no adverse revenue or expenditure impact on the Tacoma Narrows toll bridge account. Any increased costs related to this transition shall not be allocated to the Tacoma Narrows toll bridge account. All costs associated with the toll adjudication process are anticipated to be covered by revenue collected from the toll adjudication process."

Representatives Angel, Jinkins and Seaquist spoke in favor of the adoption of the amendment.

Amendment (456) was adopted.

Representative Carlyle moved the adoption of amendment (466).

0)

On page 16, line 24, increase Motor Vehicle Account--State Appropriation by \$2,295,000

On page 16, line 26, decrease the Multimodal Transportation Account--State Appropriation by \$84,000

On page 16, line 29, correct the total

On page 17, after line 14, insert the following:

"(5) \$2,500,000 of the motor vehicle account--state appropriation is provided solely for the department to implement process improvements and complete the end user needs assessment prior to the legislature funding the actual enterprise timekeeping system."

Beginning on page 56, line 36, strike all of subsection (3)

Re-number the remaining subsection consecutively and correct any internal references accordingly.

Representatives Carlyle and Smith spoke in favor of the adoption of the amendment.

Representatives Clibborn and Armstrong spoke against the adoption of the amendment.

Division was demanded and the demand was sustained. The Speaker (Representative Moeller presiding) divided the House. The result was 33 - YEAS; 62 - NAYS.

Amendment (466) was not adopted.

Representative Overstreet moved the adoption of amendment (453).

On page 27, line 34, decrease the Puget Sound Ferry Operations Account--State Appropriation by \$234,000

On page 28, line 1, after "(1)" strike "\$135,694,000" and insert "\$136,670,000"

On page 28, beginning on line 3, after "biennium." strike all material through "percent." on line 8

On page 79, line 23, after "2011" strike "and 2011-2013"

On page 79, line 23, after "fiscal" strike "~~((biennium))~~ biennia" and insert "biennium"

On page 79, line 33, strike "~~((5))~~" and insert "(5) ("

On page 80, line 3, after "~~legislature~~" strike "-:)" and insert ")") For the 2011-2013 fiscal biennium, the Washington state ferries is exempt from the provisions of this section."

Representatives Overstreet, Armstrong, Rivers, Overstreet (again), Hinkle, Angel and Klippert spoke in favor of the adoption of the amendment.

Representatives Liias and Billig spoke against the adoption of the amendment.

Amendment (453) was not adopted.

Representative Orcutt moved the adoption of amendment (451).

On page 35, line 2, after "and" strike "\$16,679,000" and insert "\$14,679,000"

On page 42, after line 17, insert the following:

"(54) \$2,000,000 of the motor vehicle account--federal appropriation is provided solely for the I-5/Scott Avenue Reconnection project. This funding is contingent upon local matching funds as required by the federal government."

Representative Orcutt and Orcutt (again) spoke in favor of the adoption of the amendment.

Representative Clibborn spoke against the adoption of the amendment.

Amendment (451) was not adopted.

Representative Rivers moved the adoption of amendment (452).

Beginning on page 74, line 11, strike all of section 702

Re-number the remaining sections consecutively, correct any internal references accordingly, and correct the title.

Representatives Rivers, Armstrong and Klippert spoke in favor of the adoption of the amendment.

Representative Clibborn spoke against the adoption of the amendment.

A roll call vote was demanded and the demand was sustained.

### ROLL CALL

The Clerk called the roll on the adoption of amendment (452) and the amendment was not adopted by the House by the following vote: Yeas, 44; Nays, 51; Absent, 0; Excused, 2.

Voting yea: Representatives Ahern, Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Voting nay: Representatives Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Frockt, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Jinkins, Kagi, Kenney, Kirby, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Probst, Reykdal, Roberts, Rolfes, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege and Mr. Speaker.

Excused: Representatives Appleton and Morris.

Amendment (452) was not adopted.

Representative Shea moved the adoption of amendment (454).

On page 86, line 35, after "(b)" insert "A local legislative authority that adopts an ordinance allowing for the use of automated traffic safety cameras must submit the ordinance to the voters within its jurisdiction at the next general election. The ordinance must be approved by the voters before automated traffic safety cameras may be used within the jurisdiction.

(c)"

Re-number the remaining subsections consecutively and correct any internal references accordingly.

Representatives Shea and Condotta spoke in favor of the adoption of the amendment.

Representative Liias spoke against the adoption of the amendment.

A roll call vote was demanded and the demand was sustained.

### ROLL CALL

The Clerk called the roll on the adoption of amendment (454) and the amendment was not adopted by the House by the following vote: Yeas, 45; Nays, 50; Absent, 0; Excused, 2.

Voting yea: Representatives Ahern, Alexander, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haigh, Haler, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Voting nay: Representatives Anderson, Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Frockt, Goodman, Green, Hudgins, Hunt, Hunter, Jinkins, Kagi, Kenney, Kirby, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Probst, Reykdal, Roberts, Rolfes, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege and Mr. Speaker.

Excused: Representatives Appleton and Morris.

Amendment (454) was not adopted.

Representative Shea moved the adoption of amendment (455).

On page 93, after line 10, insert the following:

"**Sec. 721.** RCW 82.36.450 and 2007 c 515 s 19 are each amended to read as follows:

(1) The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding motor vehicle fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the state motor vehicle fuel tax.

(2)(a) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(b) For any state/tribal fuel tax agreement in existence as of the effective date of this section, the governor must by no later than May 15, 2012, complete such actions as are permitted under those agreements to renegotiate the agreement terms to:

(i) Conform to the requirements of subsection (3) of this section; and

(ii) Provide that a maximum of fifteen percent of the motor vehicle fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe is to be refunded to the tribe.

(c) Any new agreement or modified existing agreement negotiated after the effective date of this section must contain terms as required in subsection (3) of this section.

(3) ((If a new)) Any agreement ((is negotiated, the agreement)) must:

(a) Require that the tribe or the tribal retailer acquire all motor vehicle fuel only from persons or companies operating lawfully in accordance with this chapter as a motor vehicle fuel distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds ((or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities;

transportation planning; police services; and other highway-related purposes)) on highway purposes as set forth in Article II, section 40 of the Washington Constitution;

(c) Include provisions for audits or other means of ensuring compliance to certify ((the number of gallons of motor vehicle fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing)) the tribe is in compliance with (a) and (b) of this subsection. The auditor must be selected jointly by the director of the department of licensing and the tribe. Auditor reports verifying compliance with this act must be delivered by the tribe to the director of the department of licensing within time frames established by the department.

(4) The legislature must appropriate the funds necessary to implement the agreements in this section.

~~(5) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement ((shall be deemed to be personal information under RCW 42.56.230(3)(b) and exempt from public inspection and copying)) is subject to chapter 42.56 RCW.~~

~~((5)) (6) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.~~

~~((6)) (7) The department of licensing ((shall)) must prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes.~~

**Sec. 722.** RCW 82.38.310 and 2007 c 515 s 31 are each amended to read as follows:

(1) The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding special fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the state special fuel tax.

(2)(a) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(b) For any state/tribal special fuel tax agreement in existence as of the effective date of this section, the governor must by no later than May 15, 2012, complete such actions as are permitted under those agreements to renegotiate the agreement terms to:

(i) Conform to those required by subsection (3) of this section; and

(ii) Provide that a maximum of fifteen percent of the special fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe is to be refunded to the tribe.

(c) Any new agreement or modified existing agreement negotiated after the effective date of this section must contain terms as required in subsection (3) of this section.

(3) ((If a new)) Any agreement ((is negotiated, the agreement)) must:

(a) Require that the tribe or the tribal retailer acquire all special fuel only from persons or companies operating lawfully in accordance with this chapter as a special fuel distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds ((or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related

purposes)) on highway purposes as set forth in Article II, section 40 of the Washington Constitution;

(c) Include provisions for audits or other means of ensuring compliance to certify ((the number of gallons of special fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing)) the tribe is in compliance with (a) and (b) of this subsection. The auditor must be selected jointly by the director of the department of licensing and the tribe. Auditor reports verifying compliance with this act must be delivered by the tribe to the director of the department of licensing within time frames established by the department.

(4) The legislature must appropriate the funds necessary to implement the agreements in this section.

~~(5) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement ((shall be deemed personal information under RCW 42.56.230(3)(b) and exempt from public inspection and copying)) is subject to chapter 42.56 RCW.~~

~~((5)) (6) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.~~

~~((6)) (7) The department of licensing ((shall)) must prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes."~~

Correct the title.

Representatives Shea, Orcutt, Armstrong and Shea (again) spoke in favor of the adoption of the amendment.

Representatives Liias and McCoy spoke against the adoption of the amendment.

A roll call vote was demanded and the demand was sustained.

## ROLL CALL

The Clerk called the roll on the adoption of amendment (455) and the amendment was not adopted by the House by the following vote: Yeas, 43; Nays, 52; Absent, 0; Excused, 2.

Voting yea: Representatives Ahern, Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Buys, Chandler, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Haler, Hargrove, Harris, Hinkle, Hope, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Overstreet, Parker, Pearson, Rivers, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh, Warnick, Wilcox and Zeiger.

Voting nay: Representatives Billig, Blake, Carlyle, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Frockt, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jinkins, Kagi, Kenney, Kirby, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Probst, Reykdal, Roberts, Rolfes, Ryu, Santos, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege and Mr. Speaker.

Excused: Representatives Appleton and Morris.

Amendment (455) was not adopted.

Representative Carlyle moved the adoption of amendment (472).

On page 93, after line 10, insert the following:

"**Sec. 721.** RCW 43.105.330 and 2006 c 76 s 2 are each amended to read as follows:



(1) The board shall appoint a state interoperability executive committee, the membership of which must include, but not be limited to, representatives of the military department, the Washington state patrol, the department of transportation, the department of information services, the department of natural resources, city and county governments, state and local fire chiefs, police chiefs, and sheriffs, and state and local emergency management directors. The chair and legislative members of the board will serve as nonvoting ex officio members of the committee. Voting membership may not exceed fifteen members.

(2) The chair of the board shall appoint the chair of the committee from among the voting members of the committee.

(3) The state interoperability executive committee has the following responsibilities:

(a) Develop policies and make recommendations to the board for technical standards for state wireless radio communications systems, including emergency communications systems. The standards must address, among other things, the interoperability of systems, taking into account both existing and future systems and technologies;

(b) Coordinate and manage on behalf of the board the licensing and use of state-designated and state-licensed radio frequencies, including the spectrum used for public safety and emergency communications, and serve as the point of contact with the federal communications commission on matters relating to allocation, use, and licensing of radio spectrum;

(c) ((Coordinate the purchasing of all state wireless radio communications system equipment to ensure that:

(i) After the transition from a radio over internet protocol network, any new trunked system shall be, at a minimum, project-25;

(ii) Any new system that requires advanced digital features shall be, at a minimum, project-25; and

(iii) Any new system or equipment purchases shall be, at a minimum, upgradeable to project-25;

(d))) Seek support, including possible federal or other funding, for state-sponsored wireless communications systems;

((~~e~~)) (d) Develop recommendations for legislation that may be required to promote interoperability of state wireless communications systems;

((~~f~~)) (e) Foster cooperation and coordination among public safety and emergency response organizations;

((~~g~~)) (f) Work with wireless communications groups and associations to ensure interoperability among all public safety and emergency response wireless communications systems; and

((~~h~~)) (g) Perform such other duties as may be assigned by the board to promote interoperability of wireless communications systems.

(4) During the 2011-2013 fiscal biennium, the requirement that any state or local entity must purchase radios or communication systems that are the P25 communication standard is suspended."

Correct the title.

Representatives Carlyle, Armstrong and Klippert spoke in favor of the adoption of the amendment.

Amendment (472) was adopted.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Clibborn, Armstrong, Lias, Hargrove, Billig and Angel spoke in favor of the passage of the bill.

Representatives Seaquist and Overstreet 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. 1175.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 1175, and the bill passed the House by the following vote: Yeas, 89; Nays, 6; Absent, 0; Excused, 2.

Voting yea: Representatives Ahern, Alexander, Anderson, Angel, Armstrong, Asay, Bailey, Billig, Blake, Carlyle, Chandler, Clibborn, Cody, Condotta, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Frockt, Goodman, Green, Haigh, Haler, Hargrove, Harris, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Johnson, Kagi, Kelley, Kenney, Kirby, Klippert, Kretz, Kristiansen, Ladenburg, Lias, Lytton, Maxwell, McCoy, McCune, Miloscia, Moeller, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Probst, Reykdal, Rivers, Roberts, Rodne, Rolfes, Ross, Ryu, Santos, Schmick, Sells, Short, Smith, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick, Wilcox, Zeiger and Mr. Speaker.

Voting nay: Representatives Buys, Hasegawa, Overstreet, Seaquist, Shea and Taylor.

Excused: Representatives Appleton and Morris.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1175, 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 23, 2011

HB 1511 Prime Sponsor, Representative Clibborn: Promoting efficiency in the Washington state ferry system through personnel and administration reforms. Reported by Committee on Labor & Workforce Development

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Sells, Chair; Reykdal, Vice Chair; Condotta, Ranking Minority Member; Fagan; Green; Kenney; Miloscia; Moeller; Ormsby; Roberts and Warnick.

MINORITY recommendation: Do not pass. Signed by Representatives Shea, Assistant Ranking Minority Member and Taylor.

Referred to Committee on Transportation.

March 24, 2011

HB 2014 Prime Sponsor, Representative Hunt: Concerning liquor license fees. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass. Signed by Representatives Hunt, Chair; Appleton, Vice Chair; Darneille; Dunshee; Hurst; McCoy and Miloscia.

MINORITY recommendation: Do not pass. Signed by Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander and Condotta.

Referred to Committee on Ways & Means.

March 24, 2011  
**SSB 5018** Prime Sponsor, Committee on Health & Long-Term Care: Including wound care management in occupational therapy. Reported by Committee on Health & Human Services Appropriations & Oversight

MAJORITY recommendation: Do pass. Signed by Representatives Dickerson, Chair; Appleton, Vice Chair; Johnson, Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Cody; Green; Kagi; Pettigrew and Walsh.

Passed to Committee on Rules for second reading.

March 24, 2011  
**SSB 5065** Prime Sponsor, Committee on Judiciary: Preventing animal cruelty. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 16.52.011 and 2009 c 287 s 1 are each amended to read as follows:

(1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

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

(a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care.

(b) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

(d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in ~~((#))~~ (g) of this subsection and RCW 16.52.025.

(e) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(f) "Food" means food or feed appropriate to the species for which it is intended.

~~(g)~~ (g) "Humane officer" means any individual employed, contracted,

or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025.

~~((g))~~ (h) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

~~((h))~~ (i) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and that is sufficient to provide a reasonable level of nutrition for the animal and is easily accessible to the animal.

~~((i))~~ (j) "Necessary water" means water that is in sufficient quantity and of appropriate quality for the species for which it is intended and that is accessible to the animal.

(k) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

~~((j))~~ (l) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

~~((k))~~ (m) "Similar animal" means ~~((an animal classified in the same genus))~~: (i) For a mammal, another animal that is in the same taxonomic order; or (ii) for an animal that is not a mammal, another animal that is in the same taxonomic class.

~~((l))~~ (n) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110.

Sec. 2. RCW 16.52.015 and 2003 c 53 s 110 are each amended to read as follows:

(1) Law enforcement agencies and animal care and control agencies may enforce the provisions of this chapter. Animal care and control agencies may enforce the provisions of this chapter in a county or city only if the county or city legislative authority has entered into a contract with the agency to enforce the provisions of this chapter.

(2) Animal control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Washington.

(3) Animal control officers have the following enforcement powers when enforcing this chapter:

(a) The power to issue citations based on probable cause to offenders for civil infractions and misdemeanor and gross misdemeanor violations of this chapter or RCW 9.08.070 through 9.08.078 or ~~((81.56.120))~~ 81.48.070;

(b) The power to cause a law enforcement officer to arrest and take into custody any person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or RCW 9.08.070 or ~~((81.56.120))~~ 81.48.070. Animal control officers may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(c) The power to carry nonfirearm protective devices for personal protection;

(d) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or RCW 9.08.070 or ~~((81.56.120))~~ 81.48.070, and to seize evidence of those violations.

(4) Upon request of an animal control officer who has probable cause to believe that a person has violated this chapter or RCW 9.08.070 or ~~((81.56.120))~~ 81.48.070, a law enforcement agency officer may arrest the alleged offender.

Sec. 3. RCW 16.52.085 and 2009 c 287 s 2 are each amended to read as follows:

(1) If a law enforcement officer or animal control officer has probable cause to believe that an owner of a domestic animal has

violated this chapter or (~~owns or possesses~~) a person owns, cares for, or resides with an animal in violation of an order issued under RCW 16.52.200((3)) (4) and no responsible person can be found to assume the animal's care, the officer may authorize, with a warrant, the removal of the animal to a suitable place for feeding and care, or may place the animal under the custody of an animal care and control agency. In determining what is a suitable place, the officer shall consider the animal's needs, including its size and behavioral characteristics. An officer may remove an animal under this subsection without a warrant only if the animal is in an immediate life-threatening condition.

(2) If a law enforcement officer or an animal control officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of a domestic animal allegedly neglected or abused in violation of this chapter by a veterinarian to determine whether the level of neglect or abuse in violation of this chapter is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.

(3) Any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. The notice shall be given by posting at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail if the owner is known. In making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal's owner before removal.

(4) The agency having custody of the animal may euthanize the animal or may find a responsible person to adopt the animal not less than fifteen business days after the animal is taken into custody. A custodial agency may euthanize severely injured, diseased, or suffering animals at any time. An owner may prevent the animal's destruction or adoption by: (a) Petitioning the district court of the county where the animal was seized for the animal's immediate return subject to court-imposed conditions, or (b) posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of thirty days from the seizure date. If the custodial agency still has custody of the animal when the bond or security expires, the animal shall become the agency's property unless the court orders an alternative disposition. If a court order prevents the agency from assuming ownership and the agency continues to care for the animal, the court shall order the owner to renew a bond or security for the agency's continuing costs for the animal's care. When a court has prohibited the owner from owning (~~or possessing~~), caring for, or residing with a similar animal under RCW 16.52.200((3)) (4), the agency having custody of the animal may assume ownership upon seizure and the owner may not prevent the animal's destruction or adoption by petitioning the court or posting a bond.

(5) If no criminal case is filed within fourteen business days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return. The petition shall be filed with the court, with copies served to the law enforcement or animal care and control agency responsible for removing the animal and to the prosecuting attorney. If the court grants the petition, the agency which seized the animal must deliver the animal to the owner at no cost to the owner. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.

(6) In a motion or petition for the animal's return before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.

(7) Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action.

**Sec. 4.** RCW 16.52.200 and 2009 c 287 s 3 are each amended to read as follows:

(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. (~~If forfeiture is ordered, the owner~~)

(4) Any person convicted of animal cruelty shall be prohibited from owning (~~or~~), caring for, or residing with any similar animals for a period of time as follows:

(a) Two years for a first conviction of animal cruelty in the second degree under RCW 16.52.207;

(b) Permanently for a first conviction of animal cruelty in the first degree under RCW 16.52.205;

(c) Permanently for a second or subsequent conviction of animal cruelty, except as provided in subsection ~~((4))~~ (5) of this section.

~~((4))~~ (5) If a person has no more than two convictions of animal cruelty and each conviction is for animal cruelty in the second degree, the person may petition the sentencing court in which the most recent animal cruelty conviction occurred, for a restoration of the right to own or possess a similar animal five years after the date of the second conviction. In determining whether to grant the petition, the court shall consider, but not be limited to, the following:

(a) The person's prior animal cruelty in the second degree convictions;

(b) The type of harm or violence inflicted upon the animals;

(c) Whether the person has completed the conditions imposed by the court as a result of the underlying convictions; ~~(and)~~

(d) Whether the person complied with the prohibition on owning, caring for, or residing with similar animals; and

(e) Any other matters the court finds reasonable and material to consider in determining whether the person is likely to abuse another animal.

The court may delay its decision on forfeiture under subsection (3) of this section until the end of the probationary period.

~~((5))~~ (6) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

~~((6))~~ (7) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

~~((7))~~ (8) If a person violates the prohibition on owning, caring for, or residing with similar animals under subsection (4) of this section, that person:

(a) Shall pay a civil penalty of one thousand dollars for the first violation;

(b) Shall pay a civil penalty of two thousand five hundred dollars for the second violation; and

(c) Is guilty of a gross misdemeanor for the third and each subsequent violation.

(9) As a condition of the sentence imposed under this chapter or RCW 9.08.070 through 9.08.078, the court may also order the

defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment.

**Sec. 5.** RCW 16.52.207 and 2007 c 376 s 1 are each amended to read as follows:

(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;

(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or

(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

~~(3) ((a)) Animal cruelty in the second degree ((under subsection (1), (2)(a), or (2)(b) of this section)) is a gross misdemeanor.~~

~~((b) Animal cruelty in the second degree under subsection (2)(c) of this section is a gross misdemeanor.))~~

(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control."

Correct the title.

Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler; Eddy; Frockt; Kirby; Klippert; Nealey; Orwall; Rivers and Roberts.

Passed to Committee on Rules for second reading.

March 23, 2011

**ESSB 5068** Prime Sponsor, Committee on Labor, Commerce & Consumer Protection: Addressing the abatement of violations of the Washington industrial safety and health act during an appeal. Reported by Committee on Labor & Workforce Development

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Reykdal, Vice Chair; Green; Kenney; Miloscia; Moeller; Ormsby and Roberts.

MINORITY recommendation: Do not pass. Signed by Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan; Taylor and Warnick.

Passed to Committee on Rules for second reading.

March 23, 2011

**E2SSB 5073** Prime Sponsor, Committee on Ways & Means: Concerning the medical use of cannabis. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

0)

Strike everything after the enacting clause and insert the following:

## "PART I

### LEGISLATIVE DECLARATION AND INTENT

**NEW SECTION. Sec. 101.** (1) The legislature intends to amend and clarify the law on the medical use of cannabis so that:

(a) Qualifying patients and designated providers complying with the terms of this act and registering with the department of health will no longer be subject to arrest or prosecution, other criminal sanctions, or civil consequences based solely on their medical use of cannabis;

(b) Qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis; and

(c) Health care professionals may authorize the medical use of cannabis in the manner provided by this act without fear of state criminal or civil sanctions.

(2) This act is not intended to amend or supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of cannabis for nonmedical purposes.

(3) This act is not intended to compromise community safety. State, county, or city correctional agencies or departments shall retain the authority to establish and enforce terms for those on active supervision.

**Sec. 102.** RCW 69.51A.005 and 2010 c 284 s 1 are each amended to read as follows:

~~(1) The ((people of Washington state)) legislature finds that:~~

~~(a) There is medical evidence that some patients with terminal or debilitating ((illnesses)) medical conditions may, under their health care professional's care, ((may)) benefit from the medical use of ((marijuana)) cannabis. Some of the ((illnesses)) conditions for which ((marijuana)) cannabis appears to be beneficial include ((chemotherapy related)), but are not limited to:~~

~~(i) Nausea ((and)), vomiting ((in cancer patients; AIDS wasting syndrome)), and cachexia associated with cancer, HIV-positive status, AIDS, hepatitis C, anorexia, and their treatments;~~

~~(ii) Severe muscle spasms associated with multiple sclerosis, epilepsy, and other seizure and spasticity disorders; ((epilepsy));~~

~~(iii) Acute or chronic glaucoma;~~

~~(iv) Crohn's disease; and~~

~~(v) Some forms of intractable pain.~~

~~((The people find that) (b) Humanitarian compassion necessitates that the decision to ((authorize the medical)) use ((of marijuana)) cannabis by patients with terminal or debilitating ((illnesses)) medical conditions is a personal, individual decision, based upon their health care professional's professional medical judgment and discretion.~~

~~(2) Therefore, the ((people of the state of Washington)) legislature intends that:~~

~~(a) Qualifying patients with terminal or debilitating ((illnesses)) medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of ((marijuana)) cannabis, shall not be ((found guilty of a crime under state law for their possession and limited use of marijuana)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;~~

~~(b) Persons who act as designated providers to such patients shall also not be ((found guilty of a crime under state law for)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of ((marijuana)) cannabis; and~~

(c) Health care professionals shall also ((be exempted from liability and prosecution)) not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law for the proper authorization of ((marijuana)) medical use ((to)) of cannabis by qualifying patients for whom, in the health care professional's professional judgment, the medical ((marijuana)) use of cannabis may prove beneficial.

(3) Nothing in this chapter establishes the medical necessity or medical appropriateness of cannabis for treating terminal or debilitating medical conditions as defined in RCW 69.51A.010.

(4) Nothing in this chapter diminishes the authority of correctional agencies and departments to establish a procedure for determining when the use of cannabis would impact community safety or the effective supervision of those on active supervision for a felony conviction.

**Sec. 103.** RCW 69.51A.020 and 1999 c 2 s 3 are each amended to read as follows:

Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of ((marijuana)) cannabis for nonmedical purposes. Criminal penalties created under this act do not preclude the prosecution or punishment for other crimes, including other crimes involving the manufacture or delivery of cannabis for nonmedical purposes.

## PART II DEFINITIONS

**Sec. 201.** RCW 69.51A.010 and 2010 c 284 s 2 are each amended to read as follows:

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

(1) "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this chapter, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

(2) "Cannabis analysis laboratory" means a laboratory that performs chemical analysis and inspection of cannabis samples.

(3) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this chapter and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

(4) "Corrections agency or department" means any agency or department in the state of Washington that is vested with the responsibility to manage those individuals who are being supervised in the community for a felony conviction and has established a written policy for determining when the possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

(5) "Designated provider" means a person who:

(a) Is eighteen years of age or older;

(b) Has been designated in ((writing)) a written document signed and dated by a qualifying patient to serve as a designated provider under this chapter; and

(c) Is ((prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting

as designated provider; and

(d) Is the designated provider to only one patient at any one time.

((2))) in compliance with the terms and conditions set forth in RCW 69.51A.040.

A qualifying patient may be the designated provider for another qualifying patient and be in possession of both patients' cannabis at the same time.

((6)) "Director" means the director of the department of agriculture.

((7)) "Dispense" means the selection, measuring, packaging, labeling, delivery, or retail sale of cannabis by a licensed dispenser to a qualifying patient or designated provider.

((8)) "Health care professional," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

((3)) ((9)) "Labeling" means all labels and other written, printed, or graphic matter (a) upon any cannabis intended for medical use, or (b) accompanying such cannabis.

((10)) "Licensed dispenser" means a medical organization licensed to dispense cannabis for medical use to qualifying patients and designated providers by the department of health in accordance with rules adopted by the department of health pursuant to the terms of this chapter.

((11)) "Licensed processor of cannabis products" means a person licensed by the department of agriculture to manufacture, process, handle, and label cannabis products for wholesale to licensed dispensers.

((12)) "Licensed producer" means a person licensed by the department of agriculture to produce cannabis for medical use for wholesale to licensed dispensers and licensed processors of cannabis products in accordance with rules adopted by the department of agriculture pursuant to the terms of this chapter.

((13)) "Medical use of ((marijuana)) cannabis" means the manufacture, production, processing, possession, transportation, delivery, dispensing, ingestion, application, or administration of ((marijuana, as defined in RCW 69.50.101(q))) cannabis for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating ((illness)) medical condition.

((4)) ((14)) "Nonresident" means a person who is temporarily in the state but is not a Washington state resident.

((15)) "Peace officer" means any law enforcement personnel as defined in RCW 43.101.010.

((16)) "Person" means an individual or an entity.

((17)) "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, date of birth, or address, either alone or when combined with other sources, that establish the person is a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products for purposes of registration with the department of health or department of agriculture. The term "personally identifiable information" also means any information used by the department of health or department of agriculture to identify a person as a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products.

((18)) "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

((19)) "Process" means to handle or process cannabis in preparation

for medical use.

(20) "Processing facility" means the premises and equipment where cannabis products are manufactured, processed, handled, and labeled for wholesale to licensed dispensers.

(21) "Produce" means to plant, grow, or harvest cannabis for medical use.

(22) "Production facility" means the premises and equipment where cannabis is planted, grown, harvested, processed, stored, handled, packaged, or labeled by a licensed producer for wholesale, delivery, or transportation to a licensed dispenser or licensed processor of cannabis products, and all vehicles and equipment used to transport cannabis from a licensed producer to a licensed dispenser or licensed processor of cannabis products.

(23) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(24) "Qualifying patient" means a person who:

(a)(i) Is a patient of a health care professional;

((b)) (ii) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;

((c)) (iii) Is a resident of the state of Washington at the time of such diagnosis;

((d)) (iv) Has been advised by that health care professional about the risks and benefits of the medical use of ((marijuana)) cannabis; and

((e)) (v) Has been advised by that health care professional that ((they)) he or she may benefit from the medical use of ((marijuana)) cannabis.

(b) The term "qualifying patient" does not include a person who is actively being supervised for a felony conviction by a corrections agency or department that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision and all related processes and procedures related to that supervision.

((f)) (25) "Secretary" means the secretary of health.

(26) "Tamper-resistant paper" means paper that meets one or more of the following industry-recognized features:

(a) One or more features designed to prevent copying of the paper;

(b) One or more features designed to prevent the erasure or modification of information on the paper; or

(c) One or more features designed to prevent the use of counterfeit valid documentation.

((g)) (27) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

(f) Diseases, including anorexia, which result in nausea, vomiting, ((wasting)) cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

(g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

((h)) (28) "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

(29) "Useable cannabis" means dried flowers of the *Cannabis* plant having a THC concentration greater than three-tenths of one percent. Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For purposes of this subsection, "dried" means containing less than fifteen percent moisture content by weight. The term "useable cannabis" does not include cannabis products.

(30)(a) Until July 1, 2012, "valid documentation" means:

((a)) (i) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of ((marijuana)) cannabis; ((and

—(b)) (ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and

(iii) In the case of a designated provider, the signed and dated document valid for one year from the date of signature executed by the qualifying patient who has designated the provider; and

(b) Beginning July 1, 2012, "valid documentation" means:

(i) An original statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper and valid for up to one year from the date of the health care professional's signature, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis;

(ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and

(iii) In the case of a designated provider, the signed and dated document valid for up to one year from the date of signature executed by the qualifying patient who has designated the provider.

### PART III

#### PROTECTIONS FOR HEALTH CARE PROFESSIONALS

Sec. 301. RCW 69.51A.030 and 2010 c 284 s 3 are each amended to read as follows:

((A health care professional shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for)) (1) The following acts do not constitute crimes under state law or unprofessional conduct under chapter 18.130 RCW, and a health care professional may not be arrested, searched, prosecuted, disciplined, or subject to other criminal sanctions or civil consequences or liability under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, notwithstanding any other provision of law as long as the health care professional complies with subsection (2) of this section:

((H)) (a) Advising a ((qualifying)) patient about the risks and benefits of medical use of ((marijuana)) cannabis or that the ((qualifying)) patient may benefit from the medical use of ((marijuana)) where such use is within a professional standard of care or in the individual health care professional's medical judgment)) cannabis; or

((Z)) (b) Providing a ((qualifying)) patient meeting the criteria established under RCW 69.51A.010(24) with valid documentation, based upon the health care professional's assessment of the ((qualifying)) patient's medical history and current medical condition, ((that the medical use of marijuana may benefit a particular qualifying

~~patient)) where such use is within a professional standard of care or in the individual health care professional's medical judgment.~~

(2)(a) A health care professional may only provide a patient with valid documentation authorizing the medical use of cannabis or register the patient with the registry established in section 901 of this act if he or she has a documented relationship with the patient relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition, and only after:

- (i) Completing a physical examination of the patient as appropriate, based on the patient's condition and age;
  - (ii) Documenting the terminal or debilitating medical condition of the patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;
  - (iii) Informing the patient of other options for treating the terminal or debilitating medical condition; and
  - (iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.
- (b) A health care professional shall not:
- (i) Accept, solicit, or offer any form of pecuniary remuneration from or to a licensed dispenser, licensed producer, or licensed processor of cannabis products;
  - (ii) Offer a discount or any other thing of value to a qualifying patient who is a customer of, or agrees to be a customer of, a particular licensed dispenser, licensed producers, or licensed processor of cannabis products;
  - (iii) Examine or offer to examine a patient for purposes of diagnosing a terminal or debilitating medical condition at a location where cannabis is produced, processed, or dispensed;
  - (iv) Have a business or practice which consists solely of authorizing the medical use of cannabis;
  - (v) Include any statement or reference, visual or otherwise, on the medical use of cannabis in any advertisement for his or her business or practice; or
  - (vi) Hold an economic interest in an enterprise that produces, processes, or dispenses cannabis if the health care professional authorizes the medical use of cannabis.

(3) A violation of any provision of subsection (2) of this section constitutes unprofessional conduct under chapter 18.130 RCW.

#### PART IV

#### PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS

**Sec. 401.** RCW 69.51A.040 and 2007 c 371 s 5 are each amended to read as follows:

((1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.

(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

(3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:

- (a) Meet all criteria for status as a qualifying patient or designated provider;
- (b) Possess no more marijuana than is necessary for the patient's

personal, medical use, not exceeding the amount necessary for a sixty-day supply; and

(c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.

(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.) The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property searched, seized, or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:

(1)(a) The qualifying patient or designated provider possesses no more than fifteen cannabis plants and:

- (i) No more than twenty-four ounces of useable cannabis;
- (ii) No more cannabis product than what could reasonably be produced with no more than twenty-four ounces of useable cannabis;

or

(iii) A combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis.

(b) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in (a) of this subsection, whether the plants, useable cannabis, and cannabis product are possessed individually or in combination between the qualifying patient and his or her designated provider;

(2) The qualifying patient or designated provider presents his or her proof of registration with the department of health, to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(3) The qualifying patient or designated provider keeps a copy of his or her proof of registration with the registry established in section 901 of this act and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence;

(4) The investigating peace officer does not possess evidence that the designated provider has converted cannabis produced or obtained for the qualifying patient for his or her own personal use or benefit;

and

(5) The investigating peace officer does not possess evidence that the designated provider has served as a designated provider to more than one qualifying patient within a fifteen-day period.

**NEW SECTION. Sec. 402.** A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act, but who possesses valid documentation that he or she is a qualifying patient and otherwise meets the requirements of section 401 of this act, may not be arrested or searched and may assert an affirmative defense at trial for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property searched, seized, or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance.

**NEW SECTION. Sec. 403.** (1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

- (a) No more than ten qualifying patients may participate in a single collective garden at any time;
- (b) A collective garden may contain no more than fifteen plants per patient up to a total of ninety-nine plants;
- (c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of one hundred fifty ounces of useable cannabis;
- (d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and
- (e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.

**NEW SECTION. Sec. 404.** (1) A qualifying patient may revoke his or her designation of a specific provider and designate a different provider at any time. A revocation of designation must be in writing, signed and dated. The protections of this chapter cease to apply to a person who has served as a designated provider to a qualifying patient seventy-two hours after receipt of that patient's revocation of his or her designation.

(2) A person may stop serving as a designated provider to a given qualifying patient at any time. However, that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the date the last qualifying patient designated him or her to serve as a provider.

**NEW SECTION. Sec. 405.** A qualifying patient or designated provider in possession of cannabis plants, useable cannabis, or cannabis product exceeding the limits set forth in RCW 69.51A.040(1) but otherwise in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that the qualifying patient's necessary medical use exceeds the amounts set forth in RCW 69.51A.040(1). An investigating peace officer may seize cannabis plants, useable cannabis, or cannabis product exceeding the amounts set forth in RCW 69.51A.040(1): PROVIDED, That in the case of cannabis plants, the qualifying patient or designated provider shall be allowed to select the plants that will remain at the location. The officer and his or her law enforcement agency may not be held civilly liable for failure to seize cannabis in this circumstance.

**NEW SECTION. Sec. 406.** A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act or does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she was a validly authorized qualifying patient or designated provider at the time of the officer's questioning. A qualifying patient or designated provider who

establishes an affirmative defense under the terms of this section may also establish an affirmative defense under section 405 of this act.

**NEW SECTION. Sec. 407.** A nonresident who is duly authorized to engage in the medical use of cannabis under the laws of another state or territory of the United States may raise an affirmative defense to charges of violations of Washington state law relating to cannabis, provided that the nonresident:

(1) Possesses no more than fifteen cannabis plants and no more than twenty-four ounces of useable cannabis, no more cannabis product than reasonably could be produced with no more than twenty-four ounces of useable cannabis, or a combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis;

(2) Is in compliance with all provisions of this chapter other than requirements relating to being a Washington resident or possessing valid documentation issued by a licensed health care professional in Washington; and

(3) Presents the documentation of authorization required under the nonresident's authorizing state or territory's law and proof of identity issued by the authorizing state or territory to any peace officer who questions the nonresident regarding his or her medical use of cannabis.

**NEW SECTION. Sec. 408.** A qualifying patient's medical use of cannabis as authorized by a health care professional may not be a sole disqualifying factor in determining the patient's suitability for an organ transplant, unless it is shown that this use poses a significant risk of rejection or organ failure. This section does not preclude a health care professional from requiring that a patient abstain from the medical use of cannabis, for a period of time determined by the health care professional, while waiting for a transplant organ or before the patient undergoes an organ transplant.

**NEW SECTION. Sec. 409.** A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under RCW 26.09.004.

**NEW SECTION. Sec. 410.** (1) Except as provided in subsection (2) of this section, a qualifying patient may not be refused housing or evicted from housing solely as a result of his or her possession or use of useable cannabis or cannabis products except that housing providers otherwise permitted to enact and enforce prohibitions against smoking in their housing may apply those prohibitions to smoking cannabis provided that such smoking prohibitions are applied and enforced equally as to the smoking of cannabis and the smoking of all other substances, including without limitation tobacco.

(2) Housing programs containing a program component prohibiting the use of drugs or alcohol among its residents are not required to permit the medical use of cannabis among those residents.

**NEW SECTION. Sec. 411.** In imposing any criminal sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order, any court organized under the laws of Washington state may permit the medical use of cannabis in compliance with the terms of this chapter and exclude it as a possible ground for finding that the offender has violated the conditions or requirements of the sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order. This section does not require the accommodation of any on-site medical use of cannabis in any correctional facility.

**Sec. 412.** RCW 69.51A.050 and 1999 c 2 s 7 are each amended to read as follows:

(1) The lawful possession, delivery, dispensing, production, or manufacture of ~~((medical marijuana))~~ cannabis for medical use as authorized by this chapter shall not result in the forfeiture or seizure



of any real or personal property including, but not limited to, cannabis intended for medical use, items used to facilitate the medical use of cannabis or its production or dispensing for medical use, or proceeds of sales of cannabis for medical use made by licensed producers, licensed processors of cannabis products, or licensed dispensers.

(2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of ~~((medical marijuana))~~ cannabis intended for medical use or its use as authorized by this chapter.

(3) The state shall not be held liable for any deleterious outcomes from the medical use of ~~((marijuana))~~ cannabis by any qualifying patient.

**NEW SECTION. Sec. 413.** (1) Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040.

(2) Nothing in this section applies to a person who is supervised by a corrections agency or department that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

#### PART V

##### LIMITATIONS ON PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS

**Sec. 501.** RCW 69.51A.060 and 2010 c 284 s 4 are each amended to read as follows:

(1) ~~((It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.))~~ It is unlawful to open a package containing cannabis or consume cannabis in a public place in a manner that presents a reasonably foreseeable risk that another person would see and be able to identify the substance contained in the package or being consumed as cannabis. A person who violates a provision of this section commits a class 3 civil infraction under chapter 7.80 RCW. This subsection does not apply to licensed dispensers or their employees, members, officers, or directors displaying cannabis to customers on their licensed premises as long as such displays are not visible to members of the public standing or passing outside the premises.

(2) Nothing in this chapter ~~((requires any health insurance provider))~~ establishes a right of care as a covered benefit and does not require any state purchased health care as defined in RCW 41.05.011 or other health carrier or health plan as defined in Title 48 RCW to be liable for any claim for reimbursement for the medical use of ~~((marijuana))~~ cannabis. Such entities may enact coverage or noncoverage criteria or related policies for payment or nonpayment of medical cannabis in its sole discretion.

(3) Nothing in this chapter requires any health care professional to authorize the medical use of ~~((medical marijuana))~~ cannabis for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of ~~((marijuana))~~ cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking ~~((medical marijuana))~~ cannabis in any public place as that term is defined in RCW 70.160.020.

(5) Nothing in this chapter authorizes the use of medical cannabis by any person who is subject to the Washington code of military justice in chapter 38.38 RCW.

(6) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010~~((7))~~ (30)(a), or to backdate such documentation to a time earlier than its actual date of execution.

~~((6))~~ (7) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical

use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway.

#### PART VI

##### LICENSED PRODUCERS AND LICENSED PROCESSORS OF CANNABIS PRODUCTS

**NEW SECTION. Sec. 601.** A person may not act as a licensed producer without a license for each production facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed producers and their employees, members, officers, and directors may manufacture, plant, cultivate, grow, harvest, produce, prepare, propagate, process, package, repackage, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis intended for medical use by qualifying patients, including seeds, seedlings, cuttings, plants, and useable cannabis, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.

**NEW SECTION. Sec. 602.** A person may not act as a licensed processor without a license for each processing facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed processors of cannabis products and their employees, members, officers, and directors may possess useable cannabis and manufacture, produce, prepare, process, package, repackage, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis products intended for medical use by qualifying patients, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.

**NEW SECTION. Sec. 603.** The director shall administer and carry out the provisions of this chapter relating to licensed producers and licensed processors of cannabis products, and rules adopted under this chapter.

**NEW SECTION. Sec. 604.** (1) On a schedule determined by the department of agriculture, licensed producers and licensed processors must submit representative samples of cannabis grown or processed to a cannabis analysis laboratory for grade, condition, cannabinoid profile, THC concentration, other qualitative measurements of cannabis intended for medical use, and other inspection standards determined by the department of agriculture. Any samples remaining after testing must be destroyed by the laboratory or returned to the licensed producer or licensed processor.

(2) Licensed producers and licensed processors must submit copies of the results of this inspection and testing to the department of agriculture on a form developed by the department.

(3) If a representative sample of cannabis tested under this section has a THC concentration of three-tenths of one percent or less, the lot of cannabis the sample was taken from may not be sold for medical use and must be destroyed or sold to a manufacturer of hemp products.

**NEW SECTION. Sec. 605.** The department of agriculture may contract with a cannabis analysis laboratory to conduct independent inspection and testing of cannabis samples to verify testing results provided under section 604 of this act.

**NEW SECTION. Sec. 606.** The department of agriculture may adopt rules on:

(1) Facility standards, including scales, for all licensed producers and licensed processors of cannabis products;

(2) Measurements for cannabis intended for medical use, including grade, condition, cannabinoid profile, THC concentration,

other qualitative measurements, and other inspection standards for cannabis intended for medical use; and

(3) Methods to identify cannabis intended for medical use so that such cannabis may be readily identified if stolen or removed in violation of the provisions of this chapter from a production or processing facility, or if otherwise unlawfully transported.

**NEW SECTION. Sec. 607.** The director is authorized to deny, suspend, or revoke a producer's or processor's license after a hearing in any case in which it is determined that there has been a violation or refusal to comply with the requirements of this chapter or rules adopted hereunder. All hearings for the denial, suspension, or revocation of a producer's or processor's license are subject to chapter 34.05 RCW, the administrative procedure act, as enacted or hereafter amended.

**NEW SECTION. Sec. 608.** (1) By July 1, 2012, taking into consideration, but not being limited by, the security requirements described in 21 C.F.R. Sec. 1301.71-1301.76, the director shall adopt rules:

(a) On the inspection or grading and certification of grade, grading factors, condition, cannabinoid profile, THC concentration, or other qualitative measurement of cannabis intended for medical use that must be used by cannabis analysis laboratories in section 604 of this act;

(b) Fixing the sizes, dimensions, and safety and security features required of containers to be used for packing, handling, or storing cannabis intended for medical use;

(c) Establishing labeling requirements for cannabis intended for medical use including, but not limited to:

(i) The business or trade name and Washington state unified business identifier (UBI) number of the licensed producer of the cannabis;

(ii) THC concentration; and

(iii) Information on whether the cannabis was grown using organic, inorganic, or synthetic fertilizers;

(d) Establishing requirements for transportation of cannabis intended for medical use from production facilities to processing facilities and licensed dispensers;

(e) Establishing security requirements for the facilities of licensed producers and licensed processors of cannabis products. These security requirements must consider the safety of the licensed producers and licensed processors as well as the safety of the community surrounding the licensed producers and licensed processors;

(f) Establishing requirements for the licensure of producers, and processors of cannabis products, setting forth procedures to obtain licenses, and determining expiration dates and renewal requirements; and

(g) Establishing license application and renewal fees for the licensure of producers and processors of cannabis products.

(2) Fees collected under this section must be deposited into the agricultural local fund created in RCW 43.23.230.

(3) During the rule-making process, the department of agriculture shall consult with stakeholders and persons with relevant expertise, to include but not be limited to qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the department of health.

**NEW SECTION. Sec. 609.** (1) Each licensed producer and licensed processor of cannabis products shall maintain complete records at all times with respect to all cannabis produced, processed, weighed, tested, stored, shipped, or sold. The director shall adopt rules specifying the minimum recordkeeping requirements necessary to comply with this section.

(2) The property, books, records, accounts, papers, and proceedings of every licensed producer and licensed processor of cannabis products shall be subject to inspection by the department of agriculture at any time during ordinary business hours. Licensed

producers and licensed processors of cannabis products shall maintain adequate records and systems for the filing and accounting of crop production, product manufacturing and processing, records of weights and measurements, product testing, receipts, canceled receipts, other documents, and transactions necessary or common to the medical cannabis industry.

(3) The director may administer oaths and issue subpoenas to compel the attendance of witnesses, or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purposes and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW.

(4) Each licensed producer and licensed processor of cannabis products shall report information to the department of agriculture at such times and as may be reasonably required by the director for the necessary enforcement and supervision of a sound, reasonable, and efficient cannabis inspection program for the protection of the health and welfare of qualifying patients.

**NEW SECTION. Sec. 610.** (1) The department of agriculture may give written notice to a licensed producer or processor of cannabis products to furnish required reports, documents, or other requested information, under such conditions and at such time as the department of agriculture deems necessary if a licensed producer or processor of cannabis products fails to:

(a) Submit his or her books, papers, or property to lawful inspection or audit;

(b) Submit required laboratory results, reports, or documents to the department of agriculture by their due date; or

(c) Furnish the department of agriculture with requested information.

(2) If the licensed producer or processor of cannabis products fails to comply with the terms of the notice within seventy-two hours from the date of its issuance, or within such further time as the department of agriculture may allow, the department of agriculture shall levy a fine of five hundred dollars per day from the final date for compliance allowed by this section or the department of agriculture. In those cases where the failure to comply continues for more than seven days or where the director determines the failure to comply creates a threat to public health, public safety, or a substantial risk of diversion of cannabis to unauthorized persons or purposes, the department of agriculture may, in lieu of levying further fines, petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department of agriculture to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the licensed producer or processor's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the licensed producer or processor from interfering with the department of agriculture in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department of agriculture in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section.

(4) The department of agriculture may request the Washington state patrol to assist it in enforcing this section if needed to ensure the safety of its employees.

**NEW SECTION. Sec. 611.** (1) A licensed producer may not sell or deliver cannabis to any person other than a cannabis analysis laboratory, licensed processor of cannabis products, licensed dispenser, or law enforcement officer except as provided by court order. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

(2) A licensed processor of cannabis products may not sell or deliver cannabis to any person other than a cannabis analysis laboratory licensed dispenser, or law enforcement officer except as provided by court order. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

**PART VII  
LICENSED DISPENSERS**

**NEW SECTION. Sec. 701.** A person may not act as a licensed dispenser without a license for each place of business issued by the department of health and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed dispensers and their employees, members, officers, and directors may deliver, distribute, dispense, transfer, prepare, package, repackage, label, relabel, sell at retail, or possess cannabis intended for medical use by qualifying patients, including seeds, seedlings, cuttings, plants, useable cannabis, and cannabis products, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.

**NEW SECTION. Sec. 702.** (1) By July 1, 2012, taking into consideration the security requirements described in 21 C.F.R. 1301.71-1301.76, the secretary of health shall adopt rules:

- (a) Establishing requirements for the licensure of dispensers of cannabis for medical use, setting forth procedures to obtain licenses, and determining expiration dates and renewal requirements;
- (b) Providing for mandatory inspection of licensed dispensers' locations;
- (c) Establishing procedures governing the suspension and revocation of licenses of dispensers;
- (d) Establishing recordkeeping requirements for licensed dispensers;
- (e) Fixing the sizes and dimensions of containers to be used for dispensing cannabis for medical use;
- (f) Establishing safety standards for containers to be used for dispensing cannabis for medical use;
- (g) Establishing cannabis storage requirements, including security requirements;
- (h) Establishing cannabis labeling requirements, to include information on whether the cannabis was grown using organic, inorganic, or synthetic fertilizers;
- (i) Establishing physical standards for cannabis dispensing facilities;
- (j) Establishing maximum amounts of cannabis and cannabis products that may be kept at one time at a dispensary. In determining maximum amounts, the secretary must consider the security of the dispensary and the surrounding community;
- (k) Establishing physical standards for sanitary conditions for cannabis dispensing facilities;
- (l) Establishing physical and sanitation standards for cannabis dispensing equipment;
- (m) Establishing a maximum number of licensed dispensers that may be licensed in each county as provided in section 704 of this act;
- (n) Enforcing and carrying out the provisions of this section and the rules adopted to carry out its purposes; and
- (o) Establishing license application and renewal fees for the licensure of dispensers in accordance with RCW 43.70.250.

(2) Fees collected under this section must be deposited into the health professions account created in RCW 43.70.320.

(3) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include but not be limited to qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the department of agriculture.

**NEW SECTION. Sec. 703.** A licensed dispenser may not sell cannabis received from any person other than a licensed producer or licensed processor of cannabis products, or sell or deliver cannabis to any person other than a qualifying patient, designated provider, or licensed producer except as provided by court order. Before selling or providing cannabis to a qualifying patient or designated provider, the licensed dispenser must confirm that the patient qualifies for the medical use of cannabis by contacting that patient's health care professional. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

**NEW SECTION. Sec. 704.** (1) The secretary of health shall adopt rules to establish a maximum number of licensed dispensers that may operate in each county. The maximum number shall be based upon the number of licensed dispensers reasonably required to meet the demands of the qualifying patients and designated providers from each county who are registered with the registry in section 901 of this act. The secretary may not issue more licenses than the maximum number for each county established under this subsection.

(2) Determinations of which applicants shall be licensed within a county for purposes of the maximum allowable number of licensed dispensers as provided in this section shall be made by the secretary according to a random selection process.

(3) The secretary shall establish a schedule to:

- (a) Update the maximum allowable number of licensed dispensers in each county; and
- (b) Issue approvals to operate within a county according to the random selection process.

**NEW SECTION. Sec. 705.** A license to operate as a licensed dispenser is not transferrable.

**NEW SECTION. Sec. 706.** The secretary of health shall not issue or renew a license to an applicant or licensed dispenser located within five hundred feet of a public school or another licensed dispenser.

**PART VIII  
MISCELLANEOUS PROVISIONS APPLYING TO ALL  
LICENSED PRODUCERS, PROCESSORS, AND  
DISPENSERS**

**NEW SECTION. Sec. 801.** All weighing and measuring instruments and devices used by licensed producers, processors of cannabis products, and dispensers shall comply with the requirements set forth in chapter 19.94 RCW.

**NEW SECTION. Sec. 802.** (1) No person, partnership, corporation, association, or agency may advertise cannabis for sale to the general public in any manner that promotes or tends to promote the use or abuse of cannabis. For the purposes of this subsection, displaying cannabis, including artistic depictions of cannabis, is considered to promote or to tend to promote the use or abuse of cannabis.

(2) The department of agriculture may fine a licensed producer or processor of cannabis products up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the agriculture local fund created in RCW 43.23.230.

(3) The department of health may fine a licensed dispenser up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the health professions account created in RCW 43.70.320.

(4) No broadcast television licensee, radio broadcast licensee, newspaper, magazine, advertising agency, or agency or medium for the dissemination of an advertisement, except the licensed producer, processor of cannabis products, or dispenser to which the advertisement relates, is subject to the penalties of this section by reason of dissemination of advertising in good faith without knowledge that the advertising promotes or tends to promote the use or abuse of cannabis.

**NEW SECTION. Sec. 803.** (1) A prior conviction for a cannabis or marijuana offense shall not disqualify an applicant from receiving a license to produce, process, or dispense cannabis for medical use, provided the conviction did not include any sentencing enhancements under RCW 9.94A.533 or analogous laws in other jurisdictions. Any criminal conviction of a current licensee may be considered in proceedings to suspend or revoke a license.

(2) Nothing in this section prohibits either the department of health or the department of agriculture, as appropriate, from denying, suspending, or revoking the credential of a license holder for other drug-related offenses.

(3) Nothing in this section prohibits a corrections agency or department from considering all prior and current convictions in determining whether the possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

**NEW SECTION. Sec. 804.** A violation of any provision or section of this chapter that relates to the licensing and regulation of producers, processors, or dispensers, where no other penalty is provided for, and the violation of any rule adopted under this chapter constitutes a misdemeanor.

**NEW SECTION. Sec. 805.** (1) Every licensed producer or processor of cannabis products who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for every such violation. Each violation shall be a separate and distinct offense.

(2) Every licensed dispenser who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the secretary, in an amount of not more than one thousand dollars for every such violation. Each violation shall be a separate and distinct offense.

(3) Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section.

**NEW SECTION. Sec. 806.** The department of agriculture or the department of health, as the case may be, must immediately suspend any certification of licensure issued under this chapter if the holder of the certificate has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for certification during the suspension, reissuance of the certificate of licensure shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

**NEW SECTION. Sec. 807.** The department of agriculture or the department of health, as the case may be, must suspend the certification of licensure of any person who has been certified by a lending agency and reported to the appropriate department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the department of agriculture or the department of health, as the case may be, must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license may not be reissued until the person provides the appropriate department a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification or registration during the suspension, reinstatement is automatic upon receipt of the notice and payment of any reinstatement fee.

## PART IX

### SECURE REGISTRATION OF QUALIFYING PATIENTS, DESIGNATED PROVIDERS, AND LICENSED PRODUCERS, PROCESSORS, AND DISPENSERS

**NEW SECTION. Sec. 901.** (1) By July 1, 2012, the department of health shall, in consultation with the department of agriculture, adopt rules for the creation, implementation, maintenance, and timely upgrading of a secure and confidential registration system that allows:

(a) A peace officer to verify at any time whether a health care professional has registered a person who has been contacted by that peace officer and has provided that peace officer information necessary to verify his or her registration as either a qualifying patient or a designated provider;

(b) A peace officer to verify at any time whether a health care professional has registered a person as either a qualifying patient or a designated provider, or an address as the primary residence of a qualifying patient or designated provider; and

(c) A peace officer to verify at any time during ordinary business hours of the department of health whether a person, location, or business is licensed by the department of agriculture or the department of health as a licensed producer, licensed processor of cannabis products, or licensed dispenser.

(2) The department of agriculture must, in consultation with the department of health, create and maintain a secure and confidential list of persons to whom it has issued a license to produce cannabis for medical use or a license to process cannabis products, and the physical addresses of the licensees' production and processing facilities. The list must meet the requirements of subsection (8) of this section and be transmitted to the department of health to be included in the registry established by this section.

(3) The department of health must, in consultation with the department of agriculture, create and maintain a secure and confidential list of the persons to whom it has issued a license to dispense cannabis for medical use that meets the requirements of subsection (8) of this section and must be included in the registry established by this section.

(4) Law enforcement shall comply with Article I, section 7 of the state Constitution when accessing the registration system for criminal investigations.

(5) Registration in the system shall be optional for qualifying patients and designated providers, not mandatory, and registrations are valid for one year, except that qualifying patients must be able to remove themselves from the registry at any time. For licensees, registrations are valid for the term of the license and the registration must be removed if the licensee's license is expired or revoked. The department of health must adopt rules providing for registration renewals and for removing expired registrations and expired or revoked licenses from the registry.

(6) Fees, including renewal fees, for qualifying patients and designated providers participating in the registration system shall be limited to the cost to the state of implementing, maintaining, and enforcing the provisions of this section and the rules adopted to carry out its purposes. The fee shall also include any costs for the department of health to disseminate information to employees of state and local law enforcement agencies relating to whether a person is a licensed producer, processor of cannabis products, or dispenser, or that a location is the recorded address of a license producer, processor of cannabis products, or dispenser, and for the dissemination of log records relating to such requests for information to the subjects of those requests. No fee may be charged to local law enforcement agencies for accessing the registry.

(7) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include, but not be limited to, qualifying patients, designated providers, health care professionals, state and local law enforcement

agencies, and the University of Washington computer science and engineering security and privacy research lab.

(8) The registration system shall meet the following requirements:

(a) Any personally identifiable information included in the registration system must be "nonreversible," pursuant to definitions and standards set forth by the national institute of standards and technology;

(b) Any personally identifiable information included in the registration system must not be susceptible to linkage by use of data external to the registration system;

(c) The registration system must incorporate current best differential privacy practices, allowing for maximum accuracy of registration system queries while minimizing the chances of identifying the personally identifiable information included therein; and

(d) The registration system must be upgradable and updated in a timely fashion to keep current with state of the art privacy and security standards and practices.

(9) The registration system shall maintain a log of each verification query submitted by a peace officer, including the peace officer's name, agency, and identification number, for a period of no less than three years from the date of the query. Personally identifiable information of qualifying patients and designated providers included in the log shall be confidential and exempt from public disclosure, inspection, or copying under chapter 42.56 RCW: PROVIDED, That:

(a) Names and other personally identifiable information from the list may be released only to:

(i) Authorized employees of the department of agriculture and the department of health as necessary to perform official duties of either department; or

(ii) Authorized employees of state or local law enforcement agencies, only as necessary to verify that the person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser, and only after the inquiring employee has provided adequate identification. Authorized employees who obtain personally identifiable information under this subsection may not release or use the information for any purpose other than verification that a person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser;

(b) Information contained in the registration system may be released in aggregate form, with all personally identifying information redacted, for the purpose of statistical analysis and oversight of agency performance and actions;

(c) The subject of a registration query may appear during ordinary department of health business hours and inspect or copy log records relating to him or her upon adequate proof of identity; and

(d) The subject of a registration query may submit a written request to the department of health, along with adequate proof of identity, for copies of log records relating to him or her.

(10) This section does not prohibit a department of agriculture employee or a department of health employee from contacting state or local law enforcement for assistance during an emergency or while performing his or her duties under this chapter.

(11) Fees collected under this section must be deposited into the health professions account under RCW 43.70.320.

**NEW SECTION. Sec. 902.** A new section is added to chapter 42.56 RCW to read as follows:

Records containing names and other personally identifiable information relating to qualifying patients, designated providers, and persons licensed as producers or dispensers of cannabis for medical use, or as processors of cannabis products, under section 901 of this act are exempt from disclosure under this chapter.

#### **PART X EVALUATION**

**NEW SECTION. Sec. 1001.** (1) By July 1, 2014, the Washington state institute for public policy shall, within available funds, conduct a cost-benefit evaluation of the implementation of this act and the rules adopted to carry out its purposes.

(2) The evaluation of the implementation of this act and the rules adopted to carry out its purposes shall include, but not necessarily be limited to, consideration of the following factors:

(a) Qualifying patients' access to an adequate source of cannabis for medical use;

(b) Qualifying patients' access to a safe source of cannabis for medical use;

(c) Qualifying patients' access to a consistent source of cannabis for medical use;

(d) Qualifying patients' access to a secure source of cannabis for medical use;

(e) Qualifying patients' and designated providers' contact with law enforcement and involvement in the criminal justice system;

(f) Diversion of cannabis intended for medical use to nonmedical uses;

(g) Incidents of home invasion burglaries, robberies, and other violent and property crimes associated with qualifying patients accessing cannabis for medical use;

(h) Whether there are health care professionals who make a disproportionately high amount of authorizations in comparison to the health care professional community at large;

(i) Whether there are indications of health care professionals in violation of RCW 69.51A.030; and

(j) Whether the health care professionals making authorizations reside in this state or out of this state.

(3) For purposes of facilitating this evaluation, the departments of health and agriculture will make available to the Washington state institute for public policy requested data, and any other data either department may consider relevant, from which all personally identifiable information has been redacted.

**NEW SECTION. Sec. 1002.** A new section is added to chapter 28B.20 RCW to read as follows:

The University of Washington and Washington State University may conduct scientific research on the efficacy and safety of administering cannabis as part of medical treatment. As part of this research, the University of Washington and Washington State University may develop and conduct studies to ascertain the general medical safety and efficacy of cannabis and may develop medical guidelines for the appropriate administration and use of cannabis.

#### **PART XI CONSTRUCTION**

**NEW SECTION. Sec. 1101.** (1) No civil or criminal liability may be imposed by any court on the state or its officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

(2) No civil or criminal liability may be imposed by any court on cities, towns, and counties or other municipalities and their officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

**NEW SECTION. Sec. 1102.** Cities, towns, and counties or other municipalities may adopt reasonable zoning requirements pertaining to the production, processing, or dispensing of cannabis products that are adopted pursuant to their authority and duties under chapters 36.70 and 36.70A RCW.

**NEW SECTION. Sec. 1103.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**NEW SECTION. Sec. 1104.** (1) The affirmative defenses established in sections 405, 406, and 407 of this act may not be asserted in a supervision revocation or violation hearing by a person

who is supervised by a corrections agency or department that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(2) The provisions of RCW 69.51A.040 and sections 403 and 413 of this act do not apply to a person who is supervised for a felony conviction by a corrections agency or department that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

(3) A person may not be licensed as a licensed producer, licensed processor of cannabis products, or a licensed dispenser under section 601, 602, or 701 of this act if he or she is supervised for a felony conviction by a corrections agency or department that has determined that licensure is inconsistent with and contrary to his or her supervision.

**Sec. 1105.** RCW 69.51A.900 and 1999 c 2 s 1 are each amended to read as follows:

This chapter may be known and cited as the Washington state medical use of (~~marijuana~~) cannabis act.

## PART XII

### MISCELLANEOUS

**NEW SECTION. Sec. 1201.** (1) The legislature recognizes that there are cannabis producers and cannabis dispensaries in operation as of the effective date of this section that are unregulated by the state and who produce and dispense cannabis for medical use by qualifying patients. The legislature intends that these producers and dispensaries become licensed in accordance with the requirements of this chapter and that this licensing provides them with arrest protection so long as they remain in compliance with the requirements of this chapter and the rules adopted under this chapter. The legislature further recognizes that cannabis producers and cannabis dispensaries in current operation are not able to become licensed until the department of agriculture and the department of health adopt rules and, consequently, it is likely they will remain unlicensed until at least July 1, 2012. These producers and dispensary owners and operators run the risk of arrest between the effective date of this section and the time they become licensed. Therefore, the legislature intends to provide them with an affirmative defense if they meet the requirements of this section.

(2) If charged with a violation of state law relating to cannabis, a producer of cannabis or a dispensary and its owners and operators that are engaged in the production or dispensing of cannabis to a qualifying patient or who assists a qualifying patient in the medical use of cannabis is deemed to have established an affirmative defense to such charges by proof of compliance with this section.

(3) In order to assert an affirmative defense under this section, a cannabis producer or cannabis dispensary must:

(a) In the case of producers, solely provide cannabis to cannabis dispensaries for the medical use of cannabis by qualified patients;

(b) In the case of dispensaries, solely provide cannabis to qualified patients for their medical use;

(c) Be registered with the secretary of state as of May 1, 2011;

(d) File a letter of intent with the department of agriculture or the department of health, as the case may be, asserting that the producer or dispenser intends to become licensed in accordance with this chapter and rules adopted by the appropriate department; and

(e) File a letter of intent with the city clerk if in an incorporated area or to the county clerk if in an unincorporated area stating they operate as a producer or dispensary and that they comply with the provisions of this chapter and will comply with subsequent department rule making.

(4) Upon receiving a letter of intent under subsection (3) of this section, the department of agriculture, the department of health, and the city clerk or county clerk must send a letter of acknowledgment to the producer or dispenser. The producer and dispenser must display this letter of acknowledgment in a prominent place in their facility.

(5) Letters of intent filed with a public agency, letters of acknowledgement sent from those agencies, and other materials related to such letters are exempt from public disclosure under chapter 42.56 RCW.

(6) This section expires upon the establishment of the licensing programs of the department of agriculture and the department of health and the commencement of the issuance of licenses for dispensers and producers as provided in this chapter.

**NEW SECTION. Sec. 1202.** A new section is added to chapter 42.56 RCW to read as follows:

The following information related to cannabis producers and cannabis dispensaries are exempt from disclosure under this section:

(1) Letters of intent filed with a public agency under section 1201 of this act;

(2) Letters of acknowledgement sent from a public agency under section 1201 of this act;

(3) Materials related to letters of intent and acknowledgement under section 1201 of this act.

**NEW SECTION. Sec. 1203.** RCW 69.51A.080 (Adoption of rules by the department of health--Sixty-day supply for qualifying patients) and 2007 c 371 s 8 are each repealed.

**NEW SECTION. Sec. 1204.** Sections 402 through 411, 413, 601 through 611, 701 through 706, 801 through 807, 901, 1001, 1101 through 1104, and 1201 of this act are each added to chapter 69.51A RCW.

**NEW SECTION. Sec. 1205.** Section 1002 of this act takes effect July 1, 2012."

Correct the title.

Signed by Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn; Green; Moeller and Van De Wege.

MINORITY recommendation: Do not pass. Signed by Representatives Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey; Harris and Kelley.

Referred to Committee on Ways & Means.

March 24, 2011

SB 5075

Prime Sponsor, Senator Fain: Changing the expiration dates of the mortgage lending fraud prosecution account and its revenue source. Reported by Committee on General Government Appropriations & Oversight

MAJORITY recommendation: Do pass. Signed by Representatives Hudgins, Chair; Miloscia, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Blake; Fitzgibbon; Ladenburg; Moscoso; Pedersen; Van De Wege and Wilcox.

Passed to Committee on Rules for second reading.

March 24, 2011

ESSB 5098

Prime Sponsor, Committee on Government Operations, Tribal Relations & Elections: Exempting personal information from public inspection and copying. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 42.56.230 and 2010 c 106 s 102 are each amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, emergency contact, and date of birth information for a participant in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

~~((3))~~ (4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

~~((4))~~ (5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

~~((5))~~ (6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

~~((6))~~ (7) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid."

Correct the title.

Signed by Representatives Hunt, Chair; Appleton, Vice Chair; Alexander; Darneille; Dunshee; Hurst; McCoy and Miloscia.

MINORITY recommendation: Do not pass. Signed by Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member and Condotta.

Passed to Committee on Rules for second reading.

March 21, 2011

SSB 5156 Prime Sponsor, Committee on Labor, Commerce & Consumer Protection: Concerning airport lounges under the alcohol beverage control act. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass as amended.

0)

On page 11, after line 15, insert the following:

"Sec. 6. RCW 66.28.290 and 2009 c 506 s 3 are each amended to read as follows:

(1) Notwithstanding any prohibitions and restrictions contained in this title, it shall be lawful for an industry member or affiliate to have a direct or indirect financial interest in another industry member or a retailer, and for a retailer or affiliate to have a direct or indirect financial interest in an industry member unless such interest has resulted or is more likely than not to result in undue influence over the retailer or the industry member or has resulted or is more likely than

not to result in an adverse impact on public health and safety. The structure of any such financial interest must be consistent with subsection (2) of this section.

(2) Subject to subsection (1) of this section and except as provided in RCW 66.28.295:

(a) An industry member in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570 and section 1 of this act, but may not have such a license issued in its name; and

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval pursuant to RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but may not have such a license or certificate of approval issued in its name; and

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name; and

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name."

Renumber the remaining sections consecutively and correct any internal references accordingly.

Correct the title.

Signed by Representatives Hunt, Chair; Appleton, Vice Chair; Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander; Condotta; Darneille; Dunshee; Hurst; McCoy and Miloscia.

Passed to Committee on Rules for second reading.

March 24, 2011

SSB 5184 Prime Sponsor, Committee on Early Learning & K-12 Education: Regarding compliance reports for second-class school districts. Reported by Committee on Education

MAJORITY recommendation: Do pass. Signed by Representatives Santos, Chair; Lytton, Vice Chair; Dammeier, Ranking Minority Member; Ahern; Angel; Billig; Dahlquist; Fagan; Finn; Haigh; Hargrove; Hunt; Klippert; Kretz; Ladenburg; Liias; Maxwell; McCoy; Probst and Wilcox.

Passed to Committee on Rules for second reading.

March 24, 2011

SSB 5187 Prime Sponsor, Committee on Human Services & Corrections: Concerning the accountability of mental health professionals employed by an evaluation and treatment facility for communicating with a parent or guardian about the option of parent-initiated mental health treatment. Reported by Committee on Early Learning & Human Services

MAJORITY recommendation: Do pass as amended.

0)

On page 1, line 9, after "facility" strike all material through "duties" on line 14 and insert "or facility operating as an evaluation

and treatment facility under this chapter pursuant to a single-bed certification"

On page 2, line 5, after "facility" insert "or facility operating as an evaluation and treatment facility under this chapter pursuant to a single-bed certification"

On page 2, beginning on line 14, strike all of subsection (4)

On page 2, at the beginning of line 18, insert "(1)"

On page 2, line 26, after "person" insert ", or his or her designee, in charge of the facility"

On page 2, after line 34, insert the following:

"(2) Failure of the professional person, or his or her designee, in charge of the facility to give written and verbal notice to a parent or guardian of a child under subsection (1) of this section constitutes a violation of RCW 18.130.180(7).

**NEW SECTION, Sec. 3.** A new section is added to chapter 71.34 RCW to read as follows:

An evaluation and treatment facility or facility operating as an evaluation and treatment facility under this chapter pursuant to a single-bed certification that fails to comply with the requirement to provide verbal and written notice to a parent or guardian of a child under RCW 71.24.375 is subject to a civil penalty of one thousand dollars for each failure to provide adequate notice."

Correct the title.

Signed by Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson; Goodman; Johnson; Orwall and Overstreet.

Referred to Committee on Health & Human Services Appropriations & Oversight.

March 24, 2011

**SSB 5204** Prime Sponsor, Committee on Human Services & Corrections: Concerning juveniles who have been adjudicated of a sex offense. Reported by Committee on Early Learning & Human Services

MAJORITY recommendation: Do pass as amended.

0)

On page 1, line 10, after "section" insert ", unless the sex offense or kidnapping offense was a Class A felony and the offender was age fifteen or older at the time of the offense"

On page 19, after line 25, insert the following:

"**NEW SECTION, Sec. 6.** A new section is added to chapter 28A.300 RCW to read as follows:

The superintendent of public instruction shall publish on its web site, with a link to the safety center web page, a revised and updated sample policy for schools to follow regarding students required to register as sex or kidnapping offenders.

**NEW SECTION, Sec. 7.** A new section is added to chapter 28A.320 RCW to read as follows:

When funded, each school district shall develop and adopt a written policy with procedures or amend and adopt the sample policy and procedures published on the website of the office of the superintendent of public instruction to ensure the health and safety of all staff and students in the school where students required to register as sex or kidnapping offenders are enrolled.

**NEW SECTION, Sec. 8.** A new section is added to chapter 28A.320 RCW to read as follows:

Each school that enrolls a student who is required to register as a sex or kidnapping offender pursuant to RCW 9A.44.130 must designate one person in the school to serve as the primary contact regarding all students who are required to register as sex or kidnapping offenders pursuant to RCW 9A.44.130. The primary

contact should be in a position to recognize high-risk situations or factors that may indicate a student is encountering difficulty in controlling his or her behavior.

**NEW SECTION, Sec. 9.** Sections 7 and 8 of this act take effect September 1, 2011."

Correct the title.

Signed by Representatives Kagi, Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson; Goodman; Johnson and Orwall.

MINORITY recommendation: Do not pass. Signed by Representatives Roberts, Vice Chair and Overstreet.

Referred to Committee on Ways & Means.

March 24, 2011

**ESB 5205** Prime Sponsor, Senator Kilmer: Concerning high capacity transportation system plan components and review. Reported by Committee on Transportation

MAJORITY recommendation: Do pass as amended. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Lias, Vice Chair; Armstrong, Ranking Minority Member; Angel; Eddy; Finn; Fitzgibbon; Jinkins; Ladenburg; Morris; Moscoso; Reykdal; Rolfes; Ryu; Takko and Upthegrove.

MINORITY recommendation: Do not pass. Signed by Representatives Hargrove, Assistant Ranking Minority Member; Asay; Johnson; Klippert; McCune; Rivers; Shea and Zeiger.

Passed to Committee on Rules for second reading.

March 22, 2011

**SB 5260** Prime Sponsor, Senator King: Modifying combination of vehicle provisions. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Lias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Klippert; Kristiansen; Ladenburg; McCune; Moeller; Morris; Moscoso; Overstreet; Reykdal; Rivers; Rodne; Rolfes; Ryu; Shea; Takko; Upthegrove and Zeiger.

Passed to Committee on Rules for second reading.

March 22, 2011

**SSB 5337** Prime Sponsor, Committee on Transportation: Authorizing the provision of financial assistance to privately owned airports available for general use of the public. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Lias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Klippert; Kristiansen; Ladenburg; McCune; Moeller; Morris; Moscoso; Overstreet; Reykdal; Rivers; Rodne; Ryu; Shea; Takko; Upthegrove and Zeiger.



MINORITY recommendation: Without recommendation.  
Signed by Representative Rolfes.

Passed to Committee on Rules for second reading.

March 24, 2011  
SSB 5343 Prime Sponsor, Committee on Agriculture & Rural Economic Development: Concerning air emissions from anaerobic digesters. Reported by Committee on Environment

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** (1) The department of ecology shall adopt rules establishing permitting criteria under chapter 70.94 RCW of statewide applicability for generators fueled solely by biogas produced by anaerobic digesters that qualify for the solid waste permitting exemption specified in RCW 70.95.330.

(2) Rules adopted under subsection (1) of this section must specify:

(a) Criteria levels:

(i) Below which generators are not subject to permitting requirements under chapter 70.94 RCW;

(ii) Within which generators are subject to permitting requirements under chapter 70.94 RCW but qualify for a general permit; and

(iii) Above which generators are subject to permitting requirements under chapter 70.94 RCW and do not qualify for a general permit;

(b) General permit standards, including design, operation, and location parameters; and

(c) Monitoring requirements to ensure continuing compliance with the rules adopted pursuant to this section.

(3) As used in this section, "generator" means an internal combustion engine that converts biogas into electricity, and includes any backup combustion device to burn biogas when an engine is idled for maintenance.

(4) The department of ecology shall adopt rules required by this section by January 1, 2012.

**NEW SECTION. Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Upthegrove, Chair; Rolfes, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Fitzgibbon; Jinkins; Morris; Moscoso; Nealey; Pearson; Takko; Taylor and Tharinger.

Passed to Committee on Rules for second reading.

March 24, 2011  
SSB 5392 Prime Sponsor, Committee on Early Learning & K-12 Education: Including technology as a stated educational core concept and principle. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** The legislature finds that technology can be effectively integrated into other K-12 core subjects that students are expected to know and be able to do. Integration of knowledge and skills in technology literacy and fluency into other subjects will engage and motivate students to explore high-demand careers, such as engineering, mathematics, computer science, communication, art, entrepreneurship, and others; fields in which skilled individuals will create the new ideas, new products, and new industries of the future; and fields that demand the collaborative information skills and technological fluency of digital citizenship.

**Sec. 2.** RCW 28A.150.210 and 2009 c 548 s 103 are each amended to read as follows:

A basic education is an evolving program of instruction that is intended to provide students with the opportunity to become responsible and respectful global citizens, to contribute to their economic well-being and that of their families and communities, to explore and understand different perspectives, and to enjoy productive and satisfying lives. Additionally, the state of Washington intends to provide for a public school system that is able to evolve and adapt in order to better focus on strengthening the educational achievement of all students, which includes high expectations for all students and gives all students the opportunity to achieve personal and academic success. To these ends, the goals of each school district, with the involvement of parents and community members, shall be to provide opportunities for every student to develop the knowledge and skills essential to:

(1) Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences;

(2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;

(3) Think analytically, logically, and creatively, and to integrate technology literacy and fluency as well as different experiences and knowledge to form reasoned judgments and solve problems; and

(4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities.

**NEW SECTION. Sec. 3.** This act takes effect September 1, 2011."

Correct the title.

Signed by Representatives Santos, Chair; Lytton, Vice Chair; Billig; Dahlquist; Fagan; Finn; Haigh; Hargrove; Hunt; Klippert; Ladenburg; Liias; Maxwell; McCoy and Probst.

MINORITY recommendation: Do not pass. Signed by Representatives Dammeier, Ranking Minority Member; Ahern; Angel; Kretz and Wilcox.

Passed to Committee on Rules for second reading.

March 23, 2011  
SSB 5394 Prime Sponsor, Committee on Health & Long-Term Care: Concerning primary care health homes and chronic care management. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** A new section is added to chapter 74.09 RCW to read as follows:

The legislature finds that:

(1) Health care costs are growing rapidly, exceeding the consumer price index year after year. Consequently, state health programs are capturing a growing share of the state budget, even as state revenues have declined. Sustaining these critical health programs will require actions to effectively contain health care cost increases in the future; and

(2) The primary care health home model has been demonstrated to successfully constrain costs, while improving quality of care. Chronic care management, occurring within a primary care health home, has been shown to be especially effective at reducing costs and improving quality. However, broad adoption of these models has been impeded by a fee-for-service system that reimburses volume of services and does not adequately support important primary care health home services, such as case management and patient outreach. Furthermore, successful implementation will require a broad adoption effort by private and public payers, in coordination with providers.

Therefore the legislature intends to promote the adoption of primary care health homes for children and adults and, within them, advance the practice of chronic care management to improve health outcomes and reduce unnecessary costs. To facilitate the best coordination and patient care, primary care health homes are encouraged to collaborate with other providers currently outside the medical insurance model. Successful chronic care management for persons receiving long-term care services in addition to medical care will require close coordination between primary care providers, long-term care workers, and other long-term care service providers, including area agencies on aging. Primary care providers also should consider oral health coordination through collaboration with dental providers and, when possible, delivery of oral health prevention services. The legislature also intends that the methods and approach of the primary care health home become part of basic primary care medical education.

**Sec. 2.** RCW 74.09.010 and 2010 1st sp.s. c 8 s 28 are each reenacted and amended to read as follows:

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

(1) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

~~(2) ("Committee" means the children's health services committee created in section 3 of this act.~~

~~(3))~~ "Chronic care management" means the health care management within a health home of persons identified with, or at high risk for, one or more chronic conditions. Effective chronic care management:

(a) Actively assists patients to acquire self-care skills to improve functioning and health outcomes, and slow the progression of disease or disability;

(b) Employs evidence-based clinical practices;

(c) Coordinates care across health care settings and providers, including tracking referrals;

(d) Provides ready access to behavioral health services that are, to the extent possible, integrated with primary care; and

(e) Uses appropriate community resources to support individual patients and families in managing chronic conditions.

(3) "Chronic condition" means a prolonged condition and includes, but is not limited to:

(a) A mental health condition;

(b) A substance use disorder;

(c) Asthma;

(d) Diabetes;

(e) Heart disease; and

(f) Being overweight, as evidenced by a body mass index over twenty-five.

(4) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. A combination of two or more county authorities or tribal jurisdictions may enter into joint agreements ~~((to fulfill the requirements of RCW 74.09.415 through 74.09.435)).~~

~~((4))~~ (5) "Department" means the department of social and health services.

~~((5))~~ (6) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

~~((6))~~ (7) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits.

~~((7))~~ (8) "Health home" or "primary care health home" means coordinated health care provided by a licensed primary care provider coordinating all medical care services, and a multidisciplinary health care team comprised of clinical and nonclinical staff. The term "coordinating all medical care services" shall not be construed to require prior authorization by a primary care provider in order for a patient to receive treatment for covered services by an optometrist licensed under chapter 18.53 RCW. At a minimum, primary care health home services include:

(a) Comprehensive care management including, but not limited to, chronic care treatment and management;

(b) Extended hours of service;

(c) Multiple ways for patients to communicate with the team, including electronically and by phone;

(d) Education of patients on self-care, prevention, and health promotion, including the use of patient decision aids;

(e) Coordinating and assuring smooth transitions and follow-up from inpatient to other settings;

(f) Individual and family support including authorized representatives;

(g) The use of information technology to link services, track tests, generate patient registries, and provide clinical data; and

(h) Ongoing performance reporting and quality improvement.

(9) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

~~((8))~~ (10) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

~~((9))~~ (11) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

~~((10))~~ (12) "Medical care services" means the limited scope of care financed by state funds and provided to disability lifeline benefits recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

~~((11))~~ (13) "Multidisciplinary health care team" means an interdisciplinary team of health professionals which may include, but is not limited to, medical specialists, nurses, pharmacists, nutritionists, dietitians, social workers, behavioral and mental health providers including substance use disorder prevention and treatment providers, doctors of chiropractic, physical therapists, licensed complementary and alternative medicine practitioners, home care and other long-term care providers, and physicians' assistants.

(14) "Nursing home" means nursing home as defined in RCW 18.51.010.

~~((12))~~ (15) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

~~((13))~~ (16) "Primary care provider" means a general practice physician, family practitioner, internist, pediatrician, osteopath, naturopath, physician assistant, osteopathic physician assistant, and advanced registered nurse practitioner licensed under Title 18 RCW.

(17) "Secretary" means the secretary of social and health services.

**Sec. 3.** RCW 43.70.533 and 2007 c 259 s 5 are each amended to read as follows:

(1) The department shall conduct a program of training and technical assistance regarding care of people with chronic conditions for providers of primary care. The program shall emphasize evidence-based high quality preventive and chronic disease care and shall collaborate with the health care authority to promote the adoption of primary care health homes established under this act. The department may designate one or more chronic conditions to be the subject of the program.

(2) The training and technical assistance program shall include the following elements:

(a) Clinical information systems and sharing and organization of patient data;

(b) Decision support to promote evidence-based care;

(c) Clinical delivery system design;

(d) Support for patients managing their own conditions; and

(e) Identification and use of community resources that are available in the community for patients and their families.

(3) In selecting primary care providers to participate in the program, the department shall consider the number and type of patients with chronic conditions the provider serves, and the provider's participation in the medicaid program, the basic health plan, and health plans offered through the public employees' benefits board.

(4) For the purposes of this section, "health home" and "primary care provider" have the same meaning as in RCW 74.09.010.

**Sec. 4.** RCW 74.09.522 and 1997 c 59 s 15 and 1997 c 34 s 1 are each reenacted and amended to read as follows:

(1) For the purposes of this section, "managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under RCW 74.09.520 and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act.

(2) The department of social and health services shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the department may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the department shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the department by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the department under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the department shall adopt a uniform procedure to ~~((negotiate and))~~ enter into contractual arrangements, to be included in contracts issued or renewed on or after January 1, 2012, including:

(A) Standards regarding the quality of services to be provided;  
~~((and))~~

(B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(E) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training, unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through (E) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The department shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The department shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the department may enter into prepaid capitation contracts that do not include inpatient care;

(h) The department shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services;

~~((and))~~

(i) Nothing in this section prevents the department from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The department must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The department shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The department shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The department shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized.

To help ensure these goals are met, the following principles shall guide the department in its healthy options managed health care purchasing efforts:

- (a) All managed health care systems should have an opportunity to contract with the department to the extent that minimum contracting requirements defined by the department are met, at payment rates that enable the department to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.
- (b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:
  - (i) Demonstrated commitment to or experience in serving low-income populations;
  - (ii) Quality of services provided to enrollees;
  - (iii) Accessibility, including appropriate utilization, of services offered to enrollees;
  - (iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;
  - (v) Payment rates; and
  - (vi) The ability to meet other specifically defined contract requirements established by the department, including consideration of past and current performance and participation in other state or federal health programs as a contractor.
- (c) Consideration should be given to using multiple year contracting periods.
- (d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.
- (e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The department shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the department to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.
- (f) Procedures for resolution of disputes between the department and contract bidders or the department and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document. In designing such procedures, the department shall give strong consideration to the negotiation and dispute resolution processes used by the Washington state health care authority in its managed health care contracting activities.
- (6) The department may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.

**Sec. 5.** RCW 70.47.100 and 2009 c 568 s 5 are each amended to read as follows:

(1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain

payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5)(a) The administrator may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof. At a minimum, such contracts issued on or after January 1, 2012, must include:

(i) Provider reimbursement methods that incentivize chronic care management within health homes;

(ii) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(iii) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(b) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(c) For the purposes of this subsection, "chronic care management," "chronic condition," and "health home" have the same meaning as in RCW 74.09.010.

(d) Contracts that include the items in (a)(i) through (iii) of this subsection must not exceed the rates that would be paid in the absence of these provisions.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the

administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7) The administrator may implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140. Prior to implementing a self-funded or self-insured method, the administrator shall ensure that funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. If implementing a self-funded or self-insured method, the administrator may request funds to be moved from the basic health plan trust account or the basic health plan subscription account to the basic health plan self-insurance reserve account established in RCW 41.05.140.

**Sec. 6.** RCW 41.05.021 and 2009 c 537 s 4 are each amended to read as follows:

(1) The Washington state health care authority is created within the executive branch. The authority shall have an administrator appointed by the governor, with the consent of the senate. The administrator shall serve at the pleasure of the governor. The administrator may employ up to seven staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The administrator may delegate any power or duty vested in him or her by this chapter, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205 and (g) of this subsection, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To review and approve or deny the application when the governing body of a tribal government applies to transfer their employees to an insurance or self-insurance program administered under this chapter. In the event of an employee transfer pursuant to this subsection (1)(f), members of the governing body are eligible to be included in such a transfer if the members are authorized by the tribal government to participate in the insurance program being transferred from and subject to payment by the members of all costs of insurance for the members. The authority shall: (i) Establish the conditions for participation; (ii) have the sole right to reject the application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050. Approval of the application by the authority transfers the employees and dependents involved to the insurance, self-insurance, or health care program approved by the authority;

(g) To ensure the continued status of the employee insurance or self-insurance programs administered under this chapter as a governmental plan under section 3(32) of the employee retirement income security act of 1974, as amended, the authority shall limit the participation of employees of a county, municipal, school district, educational service district, or other political subdivision, or a tribal government, including providing for the participation of those employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities;

(h) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(i) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority

and the estimated cost if school districts and educational service district employees were enrolled;

(j) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(k) To issue, distribute, and administer grants that further the mission and goals of the authority;

(l) To adopt rules consistent with this chapter as described in RCW 41.05.160 including, but not limited to:

(i) Setting forth the criteria established by the board under RCW 41.05.065 for determining whether an employee is eligible for benefits;

(ii) Establishing an appeal process in accordance with chapter 34.05 RCW by which an employee may appeal an eligibility determination;

(iii) Establishing a process to assure that the eligibility determinations of an employing agency comply with the criteria under this chapter, including the imposition of penalties as may be authorized by the board.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

(a) Standardizing the benefit package;

(b) Soliciting competitive bids for the benefit package;

(c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;

(d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans.

(3)(a) The authority must enter into contracts with all the managed care plans and for the self-insured plan or plans, to be implemented as soon as possible but no later than 2013, that include:

(i) Provider reimbursement methods that incentivize chronic care management within health homes;

(ii) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(iii) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocating funds for provider participation in the training unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(b) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(c) For the purposes of this subsection, "chronic care management," and "health home" have the same meaning as in RCW 74.09.010.

(d) Contracts with fully insured plans that include the items in (a)(i) through (iii) of this subsection must be funded within the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act.

(e) Funding for the items in (a)(i) through (iii) of this subsection in self-insured plans must not increase the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act in the absence of these provisions.

(f) Nothing in this section shall require contracted third-party health plans administering the self-insured contract to expend resources to implement items in (a)(i) through (iii) of this subsection

beyond the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act or from other sources in the absence of these provisions.

**NEW SECTION. Sec. 7.** A new section is added to chapter 41.05 RCW to read as follows:

(1) The legislature finds that collaboration among public payers, private health carriers, third-party payers, and providers to identify appropriate reimbursement methods to align incentives in support of patient centered health homes is necessary to implement the requirements of this act. The legislature therefore declares its intent to exempt from state antitrust laws, and to provide immunity from federal antitrust laws, through the state action doctrine, the collaborative and associated payment reforms designed and implemented under this section that might otherwise be constrained by such laws. The legislature does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state or federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the prices of specific levels of reimbursement for health care services.

(2) The legislature recognizes that many Washingtonians are covered by health plans regulated by the federal government, including self-insured and Taft-Hartley plans. While such plans are largely outside the state's purview, they share with the state an interest in containing health care costs and promoting quality of care. The legislature recognizes that the participation of such plans in the state's efforts to promote health homes and reform payment methods would greatly increase the likelihood of success of such efforts.

(3) The administrator shall establish a collaborative work group process to encourage input from and participation by such plans to work with the state and carriers to promote health homes and to learn from the experience of the health care authority for successful implementation of health homes for employees with chronic and multiple conditions.

(4) Beginning December 1, 2012, the administrator must report to the legislature annually on the efforts of the collaborative work group to broadly implement health homes. The report must also document the efforts to integrate health homes in the publicly purchased programs administered under this chapter and chapters 74.09 and 70.47 RCW.

(5) The administrator may write rules to establish the information that insurance carriers must submit for inclusion in the annual report to the legislature.

(6) For the purposes of this section, "chronic condition" and "health home" have the same meaning as in RCW 74.09.010.

**NEW SECTION. Sec. 8.** A new section is added to chapter 48.43 RCW to read as follows:

Each carrier licensed under this title and providing a comprehensive health plan in the state shall participate in the collaborative work group established in section 7 of this act and submit information the health care authority requires for the annual report to the legislature."

Correct the title.

Signed by Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn; Green; Kelley; Moeller and Van De Wege.

MINORITY recommendation: Do not pass. Signed by Representatives Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey and Harris.

Referred to Committee on Ways & Means.

review panels. Reported by Committee on Early Learning & Human Services

MAJORITY recommendation: Do pass. Signed by Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson; Goodman; Johnson; Orwall and Overstreet.

Passed to Committee on Rules for second reading.

March 24, 2011

2SSB 5427 Prime Sponsor, Committee on Ways & Means: Regarding an assessment of students in state-funded full-day kindergarten classrooms. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 28A.150.315 and 2010 c 236 s 4 are each amended to read as follows:

(1) Beginning with the 2007-08 school year, funding for voluntary all-day kindergarten programs shall be phased-in beginning with schools with the highest poverty levels, defined as those schools with the highest percentages of students qualifying for free and reduced-price lunch support in the prior school year. During the 2011-2013 biennium, funding shall continue to be phased-in each year until full statewide implementation of all-day kindergarten is achieved in the 2017-18 school year. Once a school receives funding for the all-day kindergarten program, that school shall remain eligible for funding in subsequent school years regardless of changes in the school's percentage of students eligible for free and reduced-price lunches as long as other program requirements are fulfilled. Additionally, schools receiving all-day kindergarten program support shall agree to the following conditions:

- (a) Provide at least a one thousand-hour instructional program;
- (b) Provide a curriculum that offers a rich, varied set of experiences that assist students in:
  - (i) Developing initial skills in the academic areas of reading, mathematics, and writing;
  - (ii) Developing a variety of communication skills;
  - (iii) Providing experiences in science, social studies, arts, health and physical education, and a world language other than English;
  - (iv) Acquiring large and small motor skills;
  - (v) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and
  - (vi) Learning through hands-on experiences;
- (c) Establish learning environments that are developmentally appropriate and promote creativity;
- (d) Demonstrate strong connections and communication with early learning community providers; and
- (e) Participate in kindergarten program readiness activities with early learning providers and parents.

(2)(a) In addition to the requirements in subsection (1) of this section and to the extent funds are available, beginning with the 2011-12 school year on a voluntary basis, schools must identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction. Kindergarten teachers shall administer the Washington kindergarten inventory of developing skills, as directed by the superintendent of public instruction in consultation with the

department of early learning, and report the results to the superintendent. The superintendent shall share the results with the director of the department of early learning.

(b) School districts shall provide an opportunity for parents and guardians to excuse their children from participation in the Washington kindergarten inventory of developing skills.

(c) To the extent funds are available, beginning in the 2012-13 school year, the Washington kindergarten inventory of developing skills shall be administered at the beginning of the school year to all students enrolled in state-funded full-day kindergarten programs with the exception of students who have been excused from participation by their parents or guardians.

(d) Until full implementation of state-funded all-day kindergarten, the superintendent of public instruction, in consultation with the director of the department of early learning, may grant annual, renewable waivers from the requirement of (c) of this subsection to administer the Washington kindergarten inventory of developing skills. A school district seeking a waiver for one or more of its schools must submit an application to the office of the superintendent of public instruction that includes:

- (i) A description of the kindergarten readiness assessment and transition processes that it proposes to administer instead of the Washington kindergarten inventory of developing skills;
- (ii) An explanation of why the administration of the Washington kindergarten inventory of developing skills would be unduly burdensome; and
- (iii) An explanation of how administration of the alternative kindergarten readiness assessment will support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction.

(3) Subject to funds appropriated for this purpose, the superintendent of public instruction shall designate one or more school districts to serve as resources and examples of best practices in designing and operating a high-quality all-day kindergarten program. Designated school districts shall serve as lighthouse programs and provide technical assistance to other school districts in the initial stages of implementing an all-day kindergarten program. Examples of topics addressed by the technical assistance include strategic planning, developing the instructional program and curriculum, working with early learning providers to identify students and communicate with parents, and developing kindergarten program readiness activities.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.655 RCW to read as follows:

Before implementing the Washington kindergarten inventory of developing skills as provided under RCW 28A.150.315, the superintendent of public instruction and the department of early learning must assure that a fairness and bias review of the assessment process has been conducted, including providing an opportunity for input from the achievement gap oversight and accountability committee under RCW 28A.300.136 and from an additional diverse group of community representatives, parents, and educators to be convened by the superintendent and the director of the department.

NEW SECTION. Sec. 3. Section 1 of this act takes effect September 1, 2011."

Correct the title.

Signed by Representatives Santos, Chair; Lytton, Vice Chair; Billig; Finn; Haigh; Hunt; Ladenburg; Liias; Maxwell; McCoy and Probst.

MINORITY recommendation: Do not pass. Signed by Representatives Dammeier, Ranking Minority Member; Ahern; Angel; Dahlquist; Fagan; Hargrove; Klippert; Kretz and Wilcox.

Referred to Committee on Ways & Means.

March 24, 2011

SSB 5436 Prime Sponsor, Committee on Natural Resources & Marine Waters: Regarding the use of antifouling paints on recreational water vessels. Reported by Committee on Environment

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature intends to phase out the use of copper-based antifouling paints used on recreational water vessels.

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

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

(2) "Director" means the director of the department of ecology.

(3)(a) "Recreational water vessel" means any vessel that is no more than sixty-five feet in length and is: (i) Manufactured or used primarily for pleasure; or (ii) leased, rented, or chartered by a person for the pleasure of that person.

(b) "Recreational water vessel" does not include a vessel that is subject to United States coast guard inspection and that: (i) Is engaged in commercial use; or (ii) carries paying passengers.

**NEW SECTION. Sec. 3.** (1) Beginning January 1, 2018, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale in this state any new recreational water vessel manufactured on or after January 1, 2018, with antifouling paint containing copper.

(2) Beginning January 1, 2020, no antifouling paint that is intended for use on a recreational water vessel and that contains more than 0.5 percent copper may be offered for sale in this state.

(3) Beginning January 1, 2020, no antifouling paint containing more than 0.5 percent copper may be applied to a recreational water vessel in this state.

**NEW SECTION. Sec. 4.** The department, in consultation and cooperation with other state natural resources agencies, must increase educational efforts regarding recreational water vessel hull cleaning to reduce the spread of invasive species. This effort must include a review of best practices that consider the type of antifouling paint used and recommendations regarding appropriate hull cleaning that includes in-water methods.

**NEW SECTION. Sec. 5.** (1) The department shall enforce the requirements of this chapter.

(2)(a) A person or entity that violates this chapter is subject to a civil penalty. The department may assess and collect a civil penalty of up to ten thousand dollars per day per violation.

(b) All penalties collected by the department under this chapter must be deposited in the state toxics control account created in RCW 70.105D.070.

**NEW SECTION. Sec. 6.** (1) On or after January 1, 2016, the director may establish and maintain a statewide advisory committee to assist the department in implementing the requirements of this chapter.

(2)(a) By January 1, 2017, the department shall survey the manufacturers of antifouling paints sold or offered for sale in this state to determine the types of antifouling paints that are available in this state. The department shall also study how antifouling paints affect marine organisms and water quality. The department shall report its findings to the legislature, consistent with RCW 43.01.036, by December 31, 2017.

(b) If the statewide advisory committee authorized under subsection (1) of this section is established by the director, the

department may consult with the statewide advisory committee to prepare the report required under (a) of this subsection.

**NEW SECTION. Sec. 7.** The department may adopt rules as necessary to implement this chapter.

**NEW SECTION. Sec. 8.** Sections 2 through 7 of this act constitute a new chapter in Title 70 RCW.

**NEW SECTION. Sec. 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.

Signed by Representatives Upthegrove, Chair; Rolfes, Vice Chair; Short, Ranking Minority Member; Fitzgibbon; Jinkins; Morris; Moscoso; Nealey; Pearson; Takko and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Harris, Assistant Ranking Minority Member and Taylor.

Passed to Committee on Rules for second reading.

March 24, 2011

SSB 5439 Prime Sponsor, Committee on Natural Resources & Marine Waters: Regarding oil spills. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Eddy; Frockt; Kirby; Klippert; Orwall; Rivers and Roberts.

MINORITY recommendation: Do not pass. Signed by Representatives Shea, Assistant Ranking Minority Member; Chandler and Nealey.

Passed to Committee on Rules for second reading.

March 23, 2011

SSB 5445 Prime Sponsor, Committee on Health & Long-Term Care: Establishing a health benefit exchange. Reported by Committee on Health Care & Wellness

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that the affordable care act requires the states to establish health benefit exchanges. The legislature intends to establish an exchange, including a governance structure that will be in place no later than July 1, 2012. There are many policy decisions associated with establishing an exchange that need to be made that will take a great deal of effort and expertise. It is therefore the intent of the legislature to establish a process through which these policy decisions can be made by the legislature and the governor by the deadline established in the affordable care act.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Terms and phrases used in this chapter that are not defined in this section must be defined as consistent with implementation of a state health benefit exchange pursuant to the affordable care act.

(1) "Affordable care act" means the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111-152, or federal regulations or guidance issued under the affordable care act.



(2) "Authority" means the Washington state health care authority, established under chapter 41.05 RCW.

(3) "Board" means the health benefit exchange board established in section 4 of this act.

(4) "Commissioner" means the insurance commissioner, established in Title 48 RCW.

(5) "Exchange" means a state health benefit exchange pursuant to the affordable care act.

**NEW SECTION. Sec. 3.** The state shall establish, by statute, a health benefit exchange consistent with the federal affordable care act, P.L. 111-148, to begin operations no later than January 1, 2014. Initially, the powers and duties of the exchange, and its board, shall be limited as provided in section 4(10) of this act. Once operational, the exchange is intended to:

(1) Increase access to quality affordable health care coverage, reduce the number of uninsured persons in Washington state, and increase the availability of health care coverage through the private health insurance market to qualified individuals and small employers;

(2) Provide consumer choice and portability of health insurance, regardless of employment status;

(3) Create an organized, transparent, and accountable health insurance marketplace for Washingtonians to purchase affordable, quality health care coverage, to claim available federal refundable premium tax credits and cost-sharing subsidies, and to meet the personal responsibility requirements for minimum essential coverage as provided under the federal affordable care act;

(4) Promote consumer literacy and empower consumers to compare plans and make informed decisions about their health care and coverage;

(5) Effectively and efficiently administer health care subsidies and determination of eligibility for participation in publicly subsidized health care programs, including the exchange;

(6) Create a health insurance market that competes on the basis of price, quality, service, and other innovative efforts;

(7) Operate in a manner compatible with efforts to improve quality, contain costs, and promote innovation;

(8) Recognize the need for a private health insurance market to exist outside of the exchange and the need for a regulatory framework that applies both inside and outside of the exchange; and

(9) Recognize that the regulation of the health insurance market, both inside and outside the exchange, should continue to be performed by the insurance commissioner.

**NEW SECTION. Sec. 4.** (1) The health benefit exchange shall be established by July 1, 2012, as a quasi-governmental, public-private partnership with a health benefit exchange board composed of nine persons with expertise in the Washington state health care system and private and public health care coverage. The governor shall appoint members of the board as follows:

(a) Two employee benefits specialists;

(b) A health economist or actuary;

(c) A representative of small businesses;

(d) A representative of health care consumer advocates;

(e) The administrator of the health care authority under chapter 41.05 RCW;

(f) The insurance commissioner or designee as a nonvoting ex officio member; and

(g) Two appointments from a list of recommendations submitted by the legislature. Each chamber of the legislature shall forward two recommendations representing mutually agreed on names from each caucus. Each person appointed to the board under this subsection (1)(g) must have demonstrated and acknowledged expertise in at least one of the following areas:

(i) Individual health care coverage;

(ii) Small employer health care coverage;

(iii) Health benefits plan administration;

(iv) Health care finance and economics;

(v) Actuarial science;

(vi) Administering a public or private health care delivery system; or

(vii) Purchasing health plan coverage.

(2) The board shall elect a chair from among its members.

(3) No board member may be employed by, a consultant to, a member of the board of directors of, or otherwise a representative of or a lobbyist for an entity in the business of, or potentially in the business of, selling items or services of significant value to the health benefit exchange.

(4) Initial members of the board shall serve staggered terms not to exceed four years. Initial appointments must be made on or before July 1, 2012. Members appointed thereafter shall serve two-year terms.

(5) Members of the board must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board are at the call of the chair.

(6) The board shall conduct its business consistent with the provisions of chapter 42.30 RCW, the open public meetings act. Consistent with the open public meetings act, the board may hold executive sessions to consider proprietary or confidential nonpublished information.

(7)(a) The board shall establish an advisory committee to allow for the views of the health care industry and other stakeholders to be heard in the operation of the health benefit exchange. The advisory committee shall provide expertise and recommendations to the board, but shall have no authority to promulgate rules or enter into contracts on behalf of the health benefit exchange.

(b) The board may establish technical advisory committees or seek the advice of technical experts when necessary to execute the powers and duties included in this act.

(8) Members of the board are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this act. Nothing in this section prohibits legal actions against the board to enforce the board's statutory or contractual duties or obligations.

(9) In recognition of the government to government relationship between the state of Washington and the federally recognized tribes in the state of Washington, the board shall consult with the American Indian health commission on an ongoing basis.

(10)(a) The powers and duties of the exchange and the board are limited to those necessary to apply for and administer grants, establish information technology infrastructure, and other administrative functions necessary to begin operating the exchange by January 1, 2014. Neither the exchange nor the board may begin operating the exchange or make substantive decisions regarding the options developed under section 5 of this act unless specifically authorized to do so by statute.

(b) Neither the exchange nor the board shall be deemed to be established until all of the members of the board are appointed as provided in subsection (1) of this section.

(c) Prior to the establishment of the exchange and the board, the authority shall:

(i) Be responsible for the duties imposed on the exchange and the board under (a) of this subsection; and

(ii) Have the powers granted to the exchange and the board under (a) of this subsection.

**NEW SECTION. Sec. 5.** (1)(a) In collaboration with the joint select committee on health reform implementation, the authority shall apply for planning and establishment grants pursuant to the affordable care act. Whenever possible, planning and establishment grant

applications shall allow for the possibility of partially funding the activities of the joint select committee on health reform implementation.

(b) The authority, in collaboration with the joint select committee on health reform implementation, shall implement provisions of the planning and establishment grants as approved by the United States secretary of health and human services.

(2) Consistent with the work plan developed in subsection (3) of this section, but in no case later than January 1, 2012, the authority, in collaboration with the joint select committee on health reform implementation, shall develop a broad range of options for establishing and implementing a state-administered health benefit exchange. The options must include analysis and recommendations on the following:

(a) The operations and administration of the exchange, including:

(i) The goals and principles of the exchange;

(ii) The creation and implementation of a single state-administered exchange for all geographic areas in the state that operates as the exchange for both the individual and small employer markets by January 1, 2014;

(iii) Whether and under what circumstances the state should consider establishment of, or participation in, a regionally administered multistate exchange;

(iv) Whether the role of an exchange includes serving as an aggregator of funds that comprise the premium for a health plan offered through the exchange;

(v) The administrative, fiduciary, accounting, contracting, and other services to be provided by the exchange;

(vi) Coordination of the exchange with other state programs;

(vii) Development of sustainable funding for administration of the exchange as of January 1, 2015; and

(viii) Recognizing the need for expedience in determining the structure of needed information technology, the necessary information technology to support implementation of exchange activities.

(b) Whether to adopt and implement a federal basic health plan option as authorized in the affordable care act, whether the federal basic health plan option should be administered by the entity that administers the exchange or by a state agency, and whether the federal basic health plan option should merge risk pools for rating with any portion of the state's medicaid program;

(c) Individual and small group market impacts, including whether to:

(i) Merge the risk pools for rating the individual and small group markets in the exchange and the private health insurance markets; and

(ii) Increase the small group market to firms with up to one hundred employees;

(d) Creation of a competitive purchasing environment for qualified health plans offered through the exchange, including promoting participation in the exchange to a level sufficient to provide sustainable funding for the exchange;

(e) Certifying, selecting, and facilitating the offer of individual and small group plans through an exchange, to include designation of qualified health plans and the levels of coverage for the plans;

(f) The role and services provided by producers and navigators, including the option to use private insurance market brokers as navigators;

(g) Effective implementation of risk management methods, including: Reinsurance, risk corridors, risk adjustment, to include the entity designated to operate reinsurance and risk adjustment, and the continuing role of the Washington state health insurance pool;

(h) Participation in innovative efforts to contain costs in Washington's markets for public and private health care coverage;

(i) Providing federal refundable premium tax credits and reduced cost-sharing subsidies through the exchange, including the processes and entity responsible for determining eligibility to participate in the

exchange and the cost-sharing subsidies provided through the exchange;

(j) The staff, resources, and revenues necessary to operate and administer an exchange for the first two years of operation;

(k) The extent and circumstances under which benefits for spiritual care services that are deductible under section 213(d) of the internal revenue code as of January 1, 2010, will be made available under the exchange; and

(l) Any other areas identified by the joint select committee on health reform implementation.

(3)(a) In collaboration with the joint select committee on health reform implementation, the authority shall develop a work plan for the development of options under subsection (2) of this section in discrete, prioritized stages.

(b) The joint select committee on health reform implementation may submit to the authority specific questions pertaining to the establishment of a health benefit exchange under section 3 of this act.

(4) The authority shall consult with the commissioner, the joint select committee on health reform implementation, and stakeholders relevant to carrying out the activities required under this section, including: (a) Educated health care consumers who are enrolled in commercial health insurance coverage and publicly subsidized health care programs; (b) individuals and entities with experience in facilitating enrollment in health insurance coverage, including health carriers, producers, and navigators; (c) representatives of small businesses, employees of small businesses, and self-employed individuals; (d) advocates for enrolling hard to reach populations and populations enrolled in publicly subsidized health care programs; (e) facilities and providers of health care; (f) representatives of publicly subsidized health care programs; and (g) members in good standing of the American academy of actuaries.

(5) Once established under section 4 of this act, the exchange and the board shall be responsible for the duties imposed on the authority under this section.

**NEW SECTION. Sec. 6.** (1) The authority may enter into:

(a) Information sharing agreements with federal and state agencies and other state exchanges to carry out the provisions of this act: **PROVIDED**, That such agreements include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations; and

(b) Interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, the department of health, and any other state agencies necessary to implement this act.

(2) To the extent funding is available, the authority shall:

(a) Provide staff and resources to implement this act;

(b) Manage and administer the grant and other funds; and

(c) Expend funds specifically appropriated by the legislature to implement the provisions of this act.

(3) Once established under section 4 of this act, the exchange and the board shall:

(a) Be responsible for the duties imposed on the authority under this section; and

(b) Have the powers granted to the authority under this section.

**NEW SECTION. Sec. 7.** Sections 1 through 6 of this act constitute a new chapter in Title 43 RCW."

Correct the title.

Signed by Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Clibborn; Green; Kelley; Moeller and Van De Wege.

MINORITY recommendation: Do not pass. Signed by Representatives Bailey and Harris.

Referred to Committee on Ways & Means.

March 24, 2011

ESSB 5449 Prime Sponsor, Committee on Labor, Commerce & Consumer Protection: Regarding the unfair competition that occurs when stolen or misappropriated information technology is used to manufacture products sold or offered for sale in this state. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

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

(1) "Article or product" means any tangible article or product, but excludes: (a) Any services sold, offered for sale, or made available in this state, including free services and online services; (b) any product subject to regulation by the United States food and drug administration and that is primarily used for medical or medicinal purposes; (c) food and beverages; and (d) restaurant services.

(2) "Copyrightable end product" means a work within the subject matter of copyright as specified in section 102 of Title 17, United States Code, and which for the purposes of this chapter includes mask works protection as specified in section 902 of Title 17, United States Code.

(3) "Essential component" means a component of an article or product provided or to be provided to a third party pursuant to a contract, including a purchase order, without which the article or product will not perform as intended and for which there is no substitute component available that offers a comparable range and quality of functionalities and is available in comparable quantities and at a comparable price.

(4) "Manufacture" means to directly manufacture, produce, or assemble an article or product subject to section 2 of this act, in whole or substantial part, but does not include contracting with or otherwise engaging another person, or that person engaging another person, to develop, manufacture, produce, or assemble an article or product subject to section 2 of this act.

(5) "Material competitive injury" means at least a three percent retail price difference between the article or product made in violation of section 2 of this act designed to harm competition and a directly competing article or product that was manufactured without the use of stolen or misappropriated information technology, with such a price difference occurring over a four-month period of time.

(6) "Retail price" means the retail price of stolen or misappropriated information technology charged at the time of, and in the jurisdiction where, the alleged theft or misappropriation occurred, multiplied by the number of stolen or misappropriated items used in the business operations of the person alleged to have violated section 2 of this act.

(7)(a) "Stolen or misappropriated information technology" means hardware or software that the person referred to in section 2 of this act acquired, appropriated, or used without the authorization of the owner of the information technology or the owner's authorized licensee in violation of applicable law, but does not include situations in which the hardware or software alleged to have been stolen or misappropriated was not available for retail purchase on a stand-alone basis at or before the time it was acquired, appropriated, or used by such a person.

(b) Information technology is considered to be used in a person's business operations if the person uses the technology in the manufacture, distribution, marketing, or sales of the articles or products subject to section 2 of this act.

**NEW SECTION. Sec. 2.** Any person who manufactures an article or product while using stolen or misappropriated information technology in its business operations after notice and opportunity to cure as provided in section 5 of this act and, with respect to remedies sought under section 6(6) or 7 of this act, causes a material competitive injury as a result of such use of stolen or misappropriated information technology, is deemed to engage in an unfair act where such an article or product is sold or offered for sale in this state, either separately or as a component of another article or product, and in competition with an article or product sold or offered for sale in this state that was manufactured without violating this section. A person who engages in such an unfair act, and any articles or products manufactured by the person in violation of this section, is subject to the liabilities and remedial provisions of this chapter in an action by the attorney general or any person described in section 6(5) of this act, except as provided in sections 3 through 9 of this act.

**NEW SECTION. Sec. 3.** No action may be brought under this chapter, and no liability results, where:

(1) The end article or end product sold or offered for sale in this state and alleged to violate section 2 of this act is:

(a) A copyrightable end product;

(b) Merchandise manufactured by or on behalf of, or pursuant to a license from, a copyright owner and which displays or embodies a name, character, artwork, or other indicia of or from a work that falls within (a) of this subsection, or merchandise manufactured by or on behalf of, or pursuant to a license from, a copyright or trademark owner and that displays or embodies a name, character, artwork, or other indicia of or from a theme park, theme park attraction, or other facility associated with a theme park; or

(c) Packaging, carrier media, or promotional or advertising materials for any end article, end product, or merchandise that falls within (a) or (b) of this subsection;

(2) The allegation that the information technology is stolen or misappropriated is based on a claim that the information technology or its use infringes a patent or misappropriates a trade secret under applicable law or that could be brought under any provision of Title 35 of the United States Code;

(3) The allegation that the information technology is stolen or misappropriated is based on a claim that the defendant's use of the information technology violates the terms of a license that allows users to modify and redistribute any source code associated with the technology free of charge; or

(4) The allegation is based on a claim that the person violated section 2 of this act by aiding, abetting, facilitating, or assisting someone else to acquire, appropriate, use, sell, or offer to sell, or by providing someone else with access to, information technology without authorization of the owner of the information technology or the owner's authorized licensee in violation of applicable law.

**NEW SECTION. Sec. 4.** No injunction may issue against a person other than the person adjudicated to have violated section 2 of this act, and no attachment order may issue against articles or products other than articles or products in which the person alleged to violate section 2 of this act holds title. A person other than the person alleged to violate section 2 of this act includes any person other than the actual manufacturer who contracts with or otherwise engages another person to develop, manufacture, produce, market, distribute, advertise, or assemble an article or product alleged to violate section 2 of this act.

**NEW SECTION. Sec. 5.** (1) No action may be brought under section 2 of this act unless the person subject to section 2 of this act received written notice of the alleged use of the stolen or misappropriated information technology from the owner or exclusive licensee of the information technology or the owner's agent and the person: (a) Failed to establish that its use of the information technology in question did not violate section 2 of this act; or (b) failed, within ninety days after receiving such a notice, to cease use of

the owner's stolen or misappropriated information technology. However, if the person commences and thereafter proceeds diligently to replace the information technology with information technology whose use would not violate section 2 of this act, such a period must be extended for an additional period of ninety days, not to exceed one hundred eighty days total. The information technology owner or the owner's agent may extend any period described in this section.

(2) To satisfy the requirements of this section, written notice must, under penalty of perjury: (a) Identify the stolen or misappropriated information technology; (b) identify the lawful owner or exclusive licensee of the information technology; (c) identify the applicable law the person is alleged to be violating and state that the notifier has a reasonable belief that the person has acquired, appropriated, or used the information technology in question without authorization of the owner of the information technology or the owner's authorized licensee in violation of such applicable law; (d) to the extent known by the notifier, state the manner in which the information technology is being used by the defendant; (e) state the articles or products to which the information technology relates; and (f) specify the basis and the particular evidence upon which the notifier bases such an allegation.

(3) The written notification must state, under penalty of perjury, that, after a reasonable and good-faith investigation, the information in the notice is accurate based on the notifier's reasonable knowledge, information, and belief.

**NEW SECTION. Sec. 6.** (1) No earlier than ninety days after the provision of notice in accordance with section 5 of this act, the attorney general, or any person described in subsection (5) of this section, may bring an action against any person that is subject to section 2 of this act:

(a) To enjoin violation of section 2 of this act, including by enjoining the person from selling or offering to sell in this state articles or products that are subject to section 2 of this act, except as provided in subsection (6) of this section. However, such an injunction does not encompass articles or products to be provided to a third party that establishes that such a third party has satisfied one or more of the affirmative defenses set forth in section 8(1) of this act with respect to the manufacturer alleged to have violated section 2 of this act;

(b) Only after a determination by the court that the person has violated section 2 of this act, to recover the greater of:

(i) Actual direct damages, which may be imposed only against the person who violated section 2 of this act; or

(ii) Statutory damages of no more than the retail price of the stolen or misappropriated information technology, which may be imposed only against the person who violated section 2 of this act; or

(c) In the event the person alleged to have violated section 2 of this act has been subject to a final judgment or has entered into a final settlement, or any products manufactured by such a person and alleged to violate section 2 of this act have been the subject of an injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall dismiss the action with prejudice. If such a person is a defendant in an ongoing action, or any products manufactured by such a person and alleged to violate section 2 of this act are the subject of an ongoing injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall stay the action against such a person pending resolution of the other action. In the event the other action results in a final judgment or final settlement, the court shall dismiss the action with prejudice against the person. Dismissals under this subsection are res judicata to actions filed against the person alleged to have violated section 2 of this act arising out of the same theft or misappropriation of information technology.

(2) After determination by the court that a person has violated section 2 of this act and entry of a judgment against the person for violating section 2 of this act, the attorney general, or a person described in subsection (5) of this section, may add to the action a claim for actual direct damages against a third party who sells or offers to sell in this state products made by that person in violation of section 2 of this act, subject to the provisions of section 8 of this act. However, damages may be imposed against a third party only if:

(a) The third party's agent for service of process was properly served with a copy of a written notice sent to the person alleged to have violated section 2 of this act that satisfies the requirements of section 5 of this act at least ninety days prior to the entry of the judgment;

(b) The person who violated section 2 of this act did not make an appearance or does not have sufficient attachable assets to satisfy a judgment against the person;

(c) Such a person either manufactured the final product or produced a component equal to thirty percent or more of the value of the final product;

(d) Such a person has a direct contractual relationship with the third party respecting the manufacture of the final product or component; and

(e) The third party has not been subject to a final judgment or entered into a final settlement in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology. However, in the event the third party is a party to an ongoing suit for damages, or has entered an appearance as an interested third party in proceedings in rem, in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology, the court shall stay the action against the third party pending resolution of the other action. In the event the other action results in a final judgment, the court shall dismiss the action with prejudice against the third party and dismiss any in rem action as to any articles or products manufactured for such a third party or that have been or are to be supplied to such a third party. Dismissals under this subsection are res judicata to actions filed against the person alleged to have violated section 2 of this act arising out of the same theft or misappropriation of information technology.

(3) An award of damages against such a third party pursuant to subsection (2) of this section must be the lesser of the retail price of the stolen or misappropriated information technology at issue or two hundred fifty thousand dollars, less any amounts recovered from the person adjudicated to have violated section 2 of this act, and subsection (4)(a) of this section does not apply to such an award or recovery against the third party.

(4) In an action under this chapter, a court may:

(a) Against the person adjudicated to have violated section 2 of this act, increase the damages up to three times the damages authorized by subsection (1)(b) of this section where the court finds that the person's use of the stolen or misappropriated information technology was willful;

(b) With respect to an award under subsection (1) of this section only, award costs and reasonable attorneys' fees to: (i) A prevailing plaintiff in actions brought by an injured person under section 2 of this act; or (ii) a prevailing defendant in actions brought by an allegedly injured person; and

(c) With respect to an action under subsection (2) of this section brought by a private plaintiff only, award costs and reasonable attorneys' fees to a third party for all litigation expenses (including, without limitation, discovery expenses) incurred by that party if it prevails on the requirement set forth in subsection (2)(c) of this section or who qualifies for an affirmative defense under section 8 of this act. However, in a case in which the third party received a copy of the notification described in subsection (2)(a) of this section at least ninety days before the filing of the action under subsection (2) of this

section, with respect to a third party's reliance on the affirmative defenses set forth in section 8(1) (c) and (d) of this act, the court may award costs and reasonable attorneys' fees only if all of the conduct on which the affirmative defense is based was undertaken by the third party, and the third party notified the plaintiff of the conduct, prior to the end of the ninety-day period.

(5) A person is deemed to have been injured by the sale or offer for sale of a directly competing article or product subject to section 2 of this act if the person establishes by a preponderance of the evidence that:

(a) The person manufactures articles or products that are sold or offered for sale in this state in direct competition with articles or products that are subject to section 2 of this act;

(b) The person's articles or products were not manufactured using stolen or misappropriated information technology of the owner of the information technology;

(c) The person suffered economic harm, which may be shown by evidence that the retail price of the stolen or misappropriated information technology was twenty thousand dollars or more; and

(d) If the person is proceeding in rem or seeks injunctive relief, that the person suffered material competitive injury as a result of the violation of section 2 of this act.

(6)(a) If the court determines that a person found to have violated section 2 of this act lacks sufficient attachable assets in this state to satisfy a judgment rendered against it, the court may enjoin the sale or offering for sale in this state of any articles or products subject to section 2 of this act, except as provided in section 4 of this act.

(b) To the extent that an article or product subject to section 2 of this act is an essential component of a third party's article or product, the court shall deny injunctive relief as to such an essential component, provided that the third party has undertaken good faith efforts within the third party's rights under its applicable contract with the manufacturer to direct the manufacturer of the essential component to cease the theft or misappropriation of information technology in violation of section 2 of this act, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease the theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue.

(7) The court shall determine whether a cure period longer than the period reflected in section 5 of this act would be reasonable given the nature of the use of the information technology that is the subject of the action and the time reasonably necessary either to bring such use into compliance with applicable law or to replace the information technology with information technology that would not violate section 2 of this act. If the court deems that a longer cure period would be reasonable, then the action shall be stayed until the end of that longer cure period. If by the end of that longer cure period, the defendant has established that its use of the information technology in question did not violate section 2 of this act, or the defendant ceased use of the stolen or misappropriated information technology, then the action must be dismissed.

**NEW SECTION. Sec. 7.** (1) In a case in which the court is unable to obtain personal jurisdiction over a person subject to section 2 of this act, the court may proceed in rem against any articles or products subject to section 2 of this act sold or offered for sale in this state in which the person alleged to have violated section 2 of this act holds title. Except as provided in section 4 of this act and subsection (2) through (4) of this section, all such articles or products are subject to attachment at or after the time of filing a complaint, regardless of the availability or amount of any monetary judgment.

(2) At least ninety days prior to the enforcement of an attachment order against articles or products pursuant to subsection (1) of this section, the court shall notify any person in possession of the articles or products of the pending attachment order. Prior to the expiration of

the ninety day period, any person for whom the articles or products were manufactured, or to whom the articles or products have been or are to be supplied, pursuant to an existing contract or purchase order, may:

(a) Establish that the person has satisfied one or more of the affirmative defenses set forth in section 8(1) of this act with respect to the manufacturer alleged to have violated section 2 of this act, in which case the attachment order must be dissolved only with respect to those articles or products that were manufactured for such a person, or have been or are to be supplied to such a person, pursuant to an existing contract or purchase order; or

(b) Post a bond with the court equal to the retail price of the allegedly stolen or misappropriated information technology or twenty-five thousand dollars, whichever is less, in which case the court shall stay enforcement of the attachment order against the articles or products and shall proceed on the basis of its jurisdiction over the bond. The person posting the bond shall recover the full amount of such bond, plus interest, after the issuance of a final judgment.

(3) In the event the person posting the bond pursuant to subsection (2)(b) of this section is entitled to claim an affirmative defense in section 8 of this act, and that person establishes with the court that the person is entitled to any affirmative defense, the court shall award costs and reasonable attorneys' fees to the person posting the bond and against the plaintiff in the event the plaintiff proceeds with an action pursuant to section 6(2) of this act against the person posting the bond.

(4) In the event that the court does not provide notification as described in subsection (2) of this section, the court, upon motion of any third party, shall stay the enforcement of the attachment order for ninety days as to articles or products manufactured for the third party, or that have been or are to be supplied to the third party, pursuant to an existing contract or purchase order, during which ninety day period the third party may avail itself of the options set forth in subsection (2)(a) and (b) of this section.

**NEW SECTION. Sec. 8.** (1) A court may not award damages against any third party pursuant to section 6(2) of this act where that party, after having been afforded reasonable notice of at least ninety days by proper service upon such a party's agent for service of process and opportunity to plead any of the affirmative defenses set forth in this subsection, establishes by a preponderance of the evidence any of the following:

(a) Such a person is the end consumer or end user of an article or product subject to section 2 of this act, or acquired the article or product after its sale to an end consumer or end user;

(b) Such a person is a business with annual revenues not in excess of fifty million dollars;

(c) The person acquired the articles or products:

(i) And had either: A code of conduct or other written document governing the person's commercial relationships with the manufacturer adjudicated to have violated section 2 of this act and which includes commitments, such as general commitments to comply with applicable laws, that prohibit use of the stolen or misappropriated information technology by such manufacturer; or written assurances from the manufacturer of the articles or products that the articles or products, to the manufacturer's reasonable knowledge, were manufactured without the use of stolen or misappropriated information technology in the manufacturer's business operations. However, with respect to this subsection (c)(i), within one hundred eighty days of receiving written notice of the judgment against the manufacturer for a violation of section 2 of this act and a copy of a written notice that satisfies the requirements of section 5 of this act, the person must undertake commercially reasonable efforts to do any of the following:

(A) Exchange written correspondence confirming that such a manufacturer is not using the stolen or misappropriated information

technology in violation of section 2 of this act, which may be satisfied, without limitation, by obtaining written assurances from the manufacturer accompanied by copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue;

(B) Direct the manufacturer to cease the theft or misappropriation, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue; and for purposes of clarification, the third party need take no additional action to fully avail itself of this affirmative defense; or

(C) In a case in which the manufacturer has failed to cease such a theft or misappropriation within the one hundred eighty-day period, and the third party has not fulfilled either option (c)(i)(A) of this subsection or option (c)(i)(B) of this subsection, cease the future acquisition of the articles or products from the manufacturer during the period that the manufacturer continues to engage in the theft or misappropriation subject to section 2 of this act where doing so would not constitute a breach of an agreement between the person and the manufacturer for the manufacture of the articles or products in question that was entered into on or before one hundred eighty days after the effective date of this section; or

(ii) Pursuant to an agreement between the person and a manufacturer for the manufacture of the articles or products in question that was entered into before one hundred eighty days after the effective date of this section. However, within one hundred eighty days of receiving written notice of the judgment against the manufacturer for a violation of section 2 of this act and a copy of a written notice that satisfies the requirements of section 5 of this act, the person must undertake commercially reasonable efforts to do any of the following:

(A) Obtain from the manufacturer written assurances that such a manufacturer is not using the stolen or misappropriated information technology in violation of section 2 of this act, which may be satisfied, without limitation, by obtaining written assurances from the manufacturer accompanied by copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue;

(B) Direct the manufacturer to cease the theft or misappropriation, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue; and for purposes of clarification, the third party need take no additional action to fully avail itself of this affirmative defense; or

(C) In a case in which the manufacturer has failed to cease the theft or misappropriation within the one hundred eighty-day period, and the third party has not fulfilled either option (c)(ii)(A) of this subsection or option (c)(ii)(B) of this subsection, cease the future acquisition of the articles or products from the manufacturer during the period that the manufacturer continues to engage in the theft or misappropriation subject to section 2 of this act where doing so would not constitute a breach of such agreement;

(d) The person has made commercially reasonable effort implement practices and procedures to require its direct manufacturers, in manufacturing articles or products for such person, not to use stolen or misappropriated information technology in violation of section 2 of this act. A person may satisfy this subsection (1)(d) by:

(i) Adopting and undertaking commercially reasonable efforts to implement a code of conduct or similar written requirements, which

are applicable to the person's direct manufacturers, that prohibit the use of stolen or misappropriated information technology by such a manufacturer, subject to a right of audit, and the person either: (A) Has a practice of auditing its direct manufacturers on a periodic basis in accordance with generally accepted industry standards; or (B) requires in its agreements with its direct manufacturers that they submit to audits by a third party, which may include a third-party association of businesses representing the owner of the stolen or misappropriated intellectual property, and further provides that a failure to remedy any deficiencies found in such an audit that constitute a violation of the applicable law of the jurisdiction where the deficiency occurred constitutes a breach of the contract, subject to cure within a reasonable period of time; or

(ii) Adopting and undertaking commercially reasonable efforts to implement a code of conduct or similar written requirements, which are applicable to the person's direct manufacturers, that prohibit use of stolen or misappropriated information technology by such a manufacturer, and the person undertakes practices and procedures to address compliance with the prohibition against the use of the stolen or misappropriated information technology in accordance with the applicable code of conduct or written requirements; or

(e) The person does not have a contractual relationship with the person alleged to have violated section 2 of this act respecting the manufacture of the articles or products alleged to have been manufactured in violation of section 2 of this act.

(2) A third party must have the opportunity to be heard regarding whether an article or product is an essential component provided or to be provided to a third party, and must have the right to file a motion to dismiss any action brought against it under section 6(2) of this act.

(3) The court may not enforce any award for damages against such a third party until after the court has ruled on that party's claim of eligibility for any of the affirmative defenses set out in this section, and prior to such a ruling may allow discovery, in an action under section 6(2) of this act, only on the particular defenses raised by the third party.

(4) The court shall allow discovery against a third party on an issue only after all discovery on that issue between the parties has been completed and only if the evidence produced as a result of the discovery does not resolve an issue of material dispute between the parties.

(5) Any confidential or otherwise sensitive information submitted by a party pursuant to this section is subject to a protective order.

**NEW SECTION. Sec. 9.** A court may not enforce an award of damages against a third party pursuant to section 6(2) of this act for a period of eighteen months from the effective date of this section.

**NEW SECTION. Sec. 10.** A violation of this chapter may not be considered a violation of the state consumer protection act, and chapter 19.86 RCW does not apply to this chapter. The remedies provided under this chapter are the exclusive remedies for the parties.

**NEW SECTION. Sec. 11.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 12.** Sections 1 through 10 of this act constitute a new chapter in Title 19 RCW."

Correct the title.

Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler; Eddy; Frockt; Kirby; Orwall; Rivers and Roberts.

MINORITY recommendation: Do not pass. Signed by Representatives Klippert and Nealey.

Passed to Committee on Rules for second reading.

March 24, 2011

ESSB 5485 Prime Sponsor, Committee on Environment, Water & Energy: Maximizing the use of our state's natural resources. Reported by Committee on Environment

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1)(a) The University of Washington, led by the college of built environments, shall conduct a review of other states' existing building codes, international standards, peer-reviewed research, and models and tools of life-cycle assessment, embodied energy, and embodied carbon in building materials.

(b) This review must identify if the standards and models:

- (i) Are developed according to a recognized consensus-based process;
- (ii) Could be implemented as part of building standards or building codes; and
- (iii) The scope of life-cycle impacts that the standards and models address.

(2)(a) By September 1, 2012, the University of Washington shall submit a report to the legislature consistent with RCW 43.01.036. In addition to providing the data required in subsection (1) of this section, the report must include recommendations to the legislature for methodologies to:

- (i) Determine if a standard, model, or tool using life-cycle assessment can be sufficiently developed to be incorporated into the state building code; and
- (ii) Develop a comprehensive guideline using common and consistent metrics for the embodied energy and carbon in building materials.

(b) When developing its recommendations under this section, the University of Washington shall seek input from organizations representing design and construction professionals, academics, building materials industries, and life-cycle assessment experts.

(3) For the purposes of this section, "life-cycle assessment" means manufacturing, construction, operation, and disposal of products used in the construction of buildings.

**NEW SECTION. Sec. 2.** (1)(a) By December 1, 2012, the department of general administration shall make recommendations to the legislature, consistent with RCW 43.01.036, for streamlining current statutory requirements for life-cycle cost analysis, energy conservation in design, and high performance of public buildings.

(b) The department of general administration shall make recommendations on what statutory revisions, if any, are needed to the state's energy life-cycle cost analysis to account for comprehensive life-cycle impacts of carbon emissions.

(2) In making its recommendations to the legislature under subsection (1) of this section, the department of general administration shall use the report prepared by the University of Washington under section 1 of this act.

**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, 2011, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Uptegrove, Chair; Rolfes, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Fitzgibbon; Jinkins; Morris; Moscoso; Nealey; Pearson; Takko; Taylor and Tharinger.

Referred to Committee on Capital Budget.

March 24, 2011

SB 5500 Prime Sponsor, Senator Baumgartner: Concerning the rule-making process for state economic policy. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass. Signed by Representatives Hunt, Chair; Appleton, Vice Chair; Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander; Condotta; Darneille; Hurst; McCoy and Miloscia.

MINORITY recommendation: Without recommendation. Signed by Representative Dunshee.

Passed to Committee on Rules for second reading.

March 24, 2011

SSB 5502 Prime Sponsor, Committee on Transportation: Concerning the regulation, operations, and safety of limousine carriers. Reported by Committee on Transportation

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"Sec. 1.** RCW 46.72A.010 and 1996 c 87 s 4 are each amended to read as follows:

The legislature finds and declares that privately operated limousine transportation service is a vital part of the transportation system within the state and provides prearranged transportation services to state residents, tourists, and out-of-state business people. Consequently, the safety, reliability, and stability of privately operated limousine transportation services are matters of statewide importance. The regulation of privately operated limousine transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit the department and a port district in a county with a population of one million or more to regulate limousine transportation services without liability under federal antitrust laws. It is further the intent of the legislature to authorize a city with a population of five hundred thousand or more to enforce this chapter through a joint agreement with the department, and to direct the department to provide annual funding from limousine regulation-related fees that provide sufficient funds to such a city to provide delegated enforcement.

**Sec. 2.** RCW 46.72A.020 and 1996 c 87 s 5 are each amended to read as follows:

((All limousine carriers must operate from a main office and may have satellite offices. However, no office may be solely in a vehicle of any type. All arrangements for the carrier's services must be made through its offices and dispatched to the carrier's vehicles.))

(1) Contact by a customer or customer's agent to engage the services of a carrier's limousine must be initiated by a customer or customer's agent at a time and place different from the customer's time and place of departure. The fare for service must be agreed upon prior to departure. Under no circumstances may customers or customers' agents make arrangements ~~((for immediate rental of a carrier's vehicle with the driver of the vehicle))~~ to immediately engage the services of a carrier's limousine with the chauffeur, even if the ~~((driver))~~ chauffeur is an owner or officer of the company, with the single exception of stand-hail limousines only at a facility owned and operated by a port district in a county with a population of one million or more that are licensed and restricted by the rules and policies set forth by the port district.

(2) At the time of the conduct of the commercial limousine business, the chauffeur of a limousine and the limousine carrier business must possess written or electronic records substantiating the prearrangement of the carrier's services for any customer carried for compensation, except for vehicles meeting the requirements of the exception for stand-hail limousines described in subsection (1) of this section. Limousine carriers and limousine chauffeurs operating as an independent business must list a physical address on their master business license where records substantiating the prearrangement of the carrier's services may be reviewed by an enforcement officer. A limousine carrier must retain these records for a minimum of one calendar year, and failure to do so is a class 3 civil infraction against the carrier for each record that is missing or fails to include all of the information described in rules adopted under subsection (4) of this section.

(3) Limousine carriers and limousine chauffeurs operating as an independent business must list a telephone or pager number that is used to prearrange the carrier's services for any customer carried for compensation.

(4) The department shall adopt rules specifying the content and retention schedule of the records required for compliance with subsection (2) of this section.

(5) The failure of a chauffeur who is operating a limousine to immediately provide, on demand by an enforcement officer, written or electronic records required by the department substantiating the prearrangement of the carrier's services for any customer carried for compensation, except for limousines meeting the requirements of the exception for stand-hail limousines described in subsection (1) of this section, is a class 2 civil infraction and is subject to monetary penalties under RCW 7.80.120. It is a class 1 civil infraction for a repeat offense under this subsection during the same calendar year.

(6) The department shall define by rule conditions under which a chauffeur is considered to be operating a limousine, including when the limousine is parked in a designated passenger load zone.

**Sec. 3.** RCW 46.72A.030 and 1996 c 87 s 6 are each amended to read as follows:

(1) The department, in conjunction with the Washington state patrol, shall regulate limousine carriers with respect to entry, safety of equipment, chauffeur qualifications, and operations. The department shall adopt rules and require such reports as are necessary to carry out this chapter. The department may develop penalties for failure to comply with this section.

(2) In addition, a port district in a county with a population of one million or more may regulate limousine carriers with respect to entry, safety of equipment, chauffeur qualifications, and operations. The county in which the port district is located may adopt ordinances and rules to assist the port district in enforcement of limousine regulations only at port facilities. In no event may this be construed to grant the county the authority to regulate limousines within its jurisdiction. The port district may not set limousine rates, but the limousine carriers shall file their rates and schedules with the port district if requested.

(3) The department, a port district in a county with a population of at least one million, or a county in which the port district is located may enter into cooperative agreements for the joint regulation of limousines.

(4) The department and a city with a population of five hundred thousand or more may enter into cooperative agreements as provided in section 12 of this act, subject to the limitations set forth in RCW 46.72A.130.

(5) The Washington state patrol shall annually conduct a vehicle inspection of each limousine licensed under this chapter, except when a port district ~~((regulates))~~, or a city with a population of five hundred thousand or more, enforces limousine carrier~~((s))~~ regulations under subsection (2) or (4) of this section, that port district or county in which the port ~~((district))~~ district is located ~~((shall))~~, or a city with a population of five hundred thousand or more, may conduct the annual limousine vehicle inspection and random limousine vehicle inspections in conjunction with limousine regulation enforcement activities, provided that the inspection criteria and fees are substantially the same regardless of the authority conducting the inspection. Random limousine vehicle inspections may not be conducted while the limousine contains customers. The state patrol, the city, or the port district~~((, or the county))~~ conducting the annual limousine vehicle inspection may impose an annual vehicle inspection fee and reinspection fee. A carrier must pay a reinspection fee if a limousine fails inspection for compliance with vehicle standards and is reinspected. If the limousine passes the first reinspection within thirty days of failing the original inspection, all of the reinspection fee must be refunded to the carrier. However, refunds are not available for subsequent reinspections. While a limousine is licensed by the department for commercial limousine use, failure to comply with vehicle inspection standards, established by the department by rule, is a class 3 civil infraction against the carrier, with monetary penalties against the carrier as specified in RCW 7.80.120, for each violation of a safety requirement. It is a class 4 civil infraction for each violation of other vehicle standards, with monetary penalties against the carrier as specified in RCW 7.80.120, and the limousine vehicle certificate must be summarily suspended until safety violations of vehicle standards are corrected and the limousine is reinspected.

**Sec. 4.** RCW 46.72A.040 and 1996 c 87 s 7 are each amended to read as follows:

Except when a port district regulates limousine carriers under RCW 46.72A.030 or a city with a population of five hundred thousand or more is authorized under section 12 of this act to enforce state laws or rules applicable to limousine carriers, limousines, and chauffeurs, subject to the limitations set forth in section 12 of this act, the state of Washington fully occupies and preempts the entire field of regulation over limousine carriers as regulated by this chapter. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to limousine carriers that are consistent with this chapter.

**Sec. 5.** RCW 46.72A.050 and 1996 c 87 s 8 are each amended to read as follows:

(1) No limousine carrier may operate a limousine upon the highways of this state without first ~~((obtaining a business license from the department. The applicant shall forward an application for a business license to the department along with a fee established by rule. Upon approval of the application, the department shall issue a business license and unified business identifier authorizing the carrier to operate limousines upon the highways of this state))~~ being properly registered as a business in Washington and having been issued a unified business identifier.

(2) In addition, a limousine carrier shall ~~((annually))~~ obtain ~~((upon payment of the appropriate fee,))~~ from the department a limousine carrier license for the business and a ((vehicle)) limousine vehicle certificate for each limousine operated by the carrier. The limousine



carrier license and limousine vehicle certificates must be renewed through the department annually or as may be required by the department. The department shall establish by rule the procedure for obtaining, and the fees for, the limousine carrier license and limousine vehicle certificate. It is a class 1 civil infraction, with monetary penalties against the carrier as specified in RCW 7.80.120, for each day that a limousine is operated without a valid limousine carrier license or valid limousine vehicle certificate required under this subsection.

**Sec. 6.** RCW 46.72A.060 and 2003 c 53 s 251 are each amended to read as follows:

(1) The department shall require limousine carriers to obtain and continue in effect, liability and property damage insurance from a company licensed to sell liability insurance in this state for each limousine used to transport persons for compensation.

(2) The department shall fix ~~((the amount of))~~ by rule coverages and limits, and prohibit provisions that limit coverage, for the insurance policy or policies, giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The limousine carrier must maintain the liability and property damage insurance in force on each ~~((motor propelled vehicle while so used))~~ limousine while licensed by the department.

(3) Failure to file and maintain in effect the insurance required under this section is a gross misdemeanor and the limousine vehicle certificate must be summarily suspended. It is a class 1 civil infraction, with monetary penalties against the carrier as specified in RCW 7.80.120, for each day that a carrier operates a limousine with a summarily suspended limousine vehicle certificate.

**Sec. 7.** RCW 46.72A.080 and 1997 c 193 s 1 are each amended to read as follows:

(1) No limousine carrier may advertise without listing the carrier's unified business identifier issued by the department in the advertisement and specifying the type of service offered as provided in RCW 46.04.274. No limousine carrier may advertise or hold itself out to the public as providing taxicab transportation services.

(2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a limousine carrier's name or address shall list the carrier's unified business identifier and the type of service offered. The alphabetized listing of limousine carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address must show the carrier's current unified business identifier.

(3) Advertising in the alphabetical listing in a telephone directory need not contain the carrier's certified business identifier.

(4) (Advertising by electronic transmission need not contain the carrier's unified business identifier if the carrier provides it to the person selling the advertisement and it is recorded in the advertising contract.

(5)) It is a ~~((gross misdemeanor))~~ violation, subject to a fine of up to five thousand dollars per violation, for a person to (a) falsify a unified business identifier or use a false or inaccurate unified business identifier; (b) fail to specify the type of service offered; ~~((or))~~ (c) advertise or otherwise hold itself out to the public as providing taxicab transportation services in connection with a solicitation or identification as an authorized limousine carrier; or (d) conduct commercial limousine business without a valid limousine carrier license or valid limousine vehicle certificate as required under this chapter, unless licensed as a charter party carrier under chapter 81.70 RCW.

(5) If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

(6) In deciding the amount of penalty to be imposed per violation, the department shall consider the following factors:

(a) The carrier's willingness to comply with the department's rules

under this chapter; and

(b) The carrier's history with respect to compliance with this section.

(7) It is a class 1 civil infraction, with monetary penalties against the chauffeur as specified in RCW 7.80.120, for a chauffeur to:

(a) Solicit or assign customers directly or through a third party for immediate, nonprearranged limousine service pick up as described in section 2(1) of this act; or

(b) Offer payment to a third party to solicit customers for limousine service pick up without current copies of a written contract regarding such services on file at the third party's business. Copies of the current written contract must be stored and made available on both the third party's and limousine carrier's business premises. Limousine vehicles engaged in the services detailed in the contract must carry a certificate verifying existence of a current contract between the parties. The certificate must contain a general description of the agreement, including initial and expiration dates. A written contract may not allow for immediate, nonprearranged limousine service pick up.

(8) It is a class 1 civil infraction, with monetary penalties against the individual as specified in RCW 7.80.120, for an individual to:

(a) Accept payment to solicit or assign customers on the behalf of a chauffeur for immediate, nonprearranged limousine service pick up as described in section 2(1) of this act; or

(b) Accept payment to solicit customers for limousine service pick up without current copies of a written contract regarding such services on file at the third party's business. Copies of the current written contract must be stored and made available on the third party's business premises and in any limousine engaged in the services detailed in the contract. A written contract may not allow for immediate, nonprearranged limousine service pick up.

**Sec. 8.** RCW 46.72A.090 and 1996 c 87 s 12 are each amended to read as follows:

(1) The limousine carrier shall ~~((certify)), before a chauffeur operates a limousine, provide proof in a form approved by the department~~ to the appropriate regulating authority that each chauffeur hired to operate a limousine meets the following criteria administered or monitored by the department or an authority approved by the department: ~~((+))~~ (a) Is at least twenty-one years of age; ~~((2))~~ (b) holds a valid Washington state driver's license; ~~((3))~~ (c) has successfully completed a training course approved by the department; ~~((4))~~ (d) has successfully passed a written examination which, to the greatest extent practicable, the department must administer in the applicant's language of preference; ~~((5))~~ (e) has successfully completed a background check performed by the Washington state patrol or a credentialing authority approved by the department that meets standards adopted by rule by the department; (f) has passed an initial test and is participating in a random testing program designed to detect the presence of any controlled substances determined by the department; (g) has a satisfactory driving record that meets moving accident and moving violation conviction standards adopted by rule by the department; and ~~((6))~~ (h) has submitted a medical certificate certifying the individual's fitness as a chauffeur. Upon initial application and every ~~((three))~~ two years thereafter, a chauffeur must file a physician's certification with the limousine carrier validating the individual's fitness to drive a limousine. The department shall determine by rule the scope of the examination and standards for denial based upon the chauffeur's physical examination. The director may require a chauffeur to ~~((be reexamined at any time))~~ undergo an additional controlled substance test or physical examination if the chauffeur has failed a controlled substance test or his or her physical fitness has been called into question.

(2) The limousine carrier shall keep on file and make available for inspection all documents required by this section.

**Sec. 9.** RCW 46.72A.100 and 2002 c 86 s 295 are each amended to read as follows:

The director may impose any of the sanctions specified in RCW 18.235.110 for unprofessional conduct as described in RCW 18.235.130 or if one of the following is true of a chauffeur hired to drive a limousine, including where such a chauffeur is also the carrier: (1) The person has been convicted of an offense of such a nature as to indicate that he or she is unfit to qualify as a chauffeur; (2) the person is guilty of committing ~~((two or more))~~ an offense(s) for which mandatory revocation of a driver's license is provided by law; (3) the person has been convicted of vehicular homicide or vehicular assault; (4) the person is intemperate or addicted to narcotics; or (5) the person, while participating in a random testing program designed to detect the presence of any controlled substances determined by the department under RCW 46.72A.090, is found to have taken one of the controlled substances determined by the department without a valid and current prescription from a licensed physician.

**Sec. 10.** RCW 46.72A.120 and 1996 c 87 s 15 are each amended to read as follows:

The department may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to carry out this chapter. The fees must approximate the cost of administration. Any fee related to limousine vehicle certificates must not exceed seventy-five dollars. Any fee related to a limousine carrier license for a business must not exceed three hundred fifty dollars. Any fee related to limousine vehicle inspections must not exceed twenty-five dollars.

**Sec. 11.** RCW 46.72A.140 and 2002 c 86 s 296 are each amended to read as follows:

The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter by the department.

**NEW SECTION. Sec. 12.** A new section is added to chapter 46.72A RCW to read as follows:

(1) The department may enter into cooperative agreements with cities with populations of five hundred thousand or more for the purpose of enforcing state laws or rules applicable to limousine carriers and chauffeurs. This power to enforce includes the right to adopt local limousine laws by city ordinance that are consistent with this chapter and the right to impose monetary penalties by civil infraction as provided in this chapter.

(2) In addition, the following specific authority and limitations to city enforcement must be included:

(a) City enforcement officers may conduct street enforcement activity consistent with this chapter;

(b) City enforcement officers may conduct inspections of limousines to verify compliance with limousine standards adopted by rule by the department and, if the carrier requests, conduct annual limousine vehicle inspections in lieu of an inspection conducted by the Washington state patrol. The city may receive all limousine inspection or reinspection fees for inspections conducted by city enforcement officers;

(c) A city may require that any limousine carrier dispatching a limousine to pick up passengers within the incorporated area of the city to maintain on file with the city insurance documents that meet the requirements adopted by rule by the department. The city may issue civil infractions to carriers and summarily suspend limousine vehicle certificates for failure to maintain on file valid insurance documents with the city.

(3) A cooperative agreement with the department for delegated enforcement must specify the schedule and amount of funds derived from limousine carrier license, limousine vehicle certificate, and chauffeur license fee revenue to be provided to the city to allow the city to provide the agreed upon level of enforcement.

**NEW SECTION. Sec. 13.** The department of licensing shall convene an internal work group regarding the issuance of chauffeur licenses. The department shall provide a report on its

recommendations on this issue to the transportation committees of the legislature by November 15, 2012.

**NEW SECTION. Sec. 14.** A new section is added to chapter 46.72A RCW to read as follows:

(1) The limousine carriers account is created in the state treasury. Notwithstanding any other provision of law, all receipts from each civil infraction and violation imposed by this chapter must be deposited into the account. Moneys in the account must be spent only after appropriation.

(2) Expenditures from the account may be used only for regulation and enforcement under this chapter, including regulation and enforcement through a cooperative agreement as described in section 12 of this act.

**NEW SECTION. Sec. 15.** Sections 1 through 12 of this act take effect January 1, 2012.

**NEW SECTION. Sec. 16.** Section 14 of this act takes effect July 1, 2012."

Correct the title.

Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Klippert; Ladenburg; Morris; Moscoso; Reykdal; Rivers; Rolfes; Ryu; Takko; Upthegrove and Zeiger.

MINORITY recommendation: Do not pass. Signed by Representatives Hargrove, Assistant Ranking Minority Member; McCune and Shea.

Referred to Committee on General Government Appropriations & Oversight.

March 24, 2011

SSB 5531

Prime Sponsor, Committee on Human Services & Corrections: Reimbursing counties for providing judicial services involving mental health commitments. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** The legislature recognizes that counties that host evaluation and treatment beds incur costs by providing judicial services associated with civil commitments under chapters 71.05 and 71.34 RCW. Because evaluation and treatment beds are not evenly distributed across the state, these commitments frequently occur in a different county from the county in which the person was originally detained. The intent of this act is to create a process for the state to reimburse counties for their reasonable costs incurred in providing these judicial services, and to prevent the burden of these costs from falling disproportionately on the counties or regional support networks in which the commitments are most likely to occur. The legislature recognizes that the cost of judicial services may vary across the state based on different factors and conditions.

**NEW SECTION. Sec. 2.** A new section is added to chapter 71.05 RCW to read as follows:

(1) A county may apply to the department for reimbursement of its cost in providing judicial services for civil commitment cases under this chapter and chapter 71.34 RCW.

(2) The department shall reimburse each county for its cost per commitment case at a rate to be determined based on an average of the expenditures for judicial services within the county over the past three years. In the event that a baseline cannot be established because

there is no significant history of similar cases within the county, the department shall approve a reasonable rate comparable to the average costs incurred in similar counties. For the purposes of this section, a case includes all judicial hearings related to a single episode of hospitalization, or less restrictive alternative detention in lieu of hospitalization, except that the filing of a petition for a one hundred eighty-day commitment under this chapter or a petition for a successive one hundred eighty-day commitment under chapter 71.34 RCW shall be considered to be a new case regardless of whether there has been a break in detention. A county may apply at reasonable intervals for an increase in its rate of reimbursement based on a change in its actual cost in delivering services.

(3) The department shall pay for reimbursements under this section out of funds from the annual appropriation to the regional support network in which the individual who is the subject of the commitment case resides. Any funds that the department retains from the appropriation to regional support networks that are not used for reimbursement must be distributed to the regional support networks. Funds which are distributed to regional support networks by the department shall not be used to reimburse counties for the cost of judicial services.

(4) As used in this section, "judicial services" refers to a county's reasonable cost in providing prosecution services, assigned counsel and defense services, court services, and court clerk services for civil commitment cases under chapters 71.05 and 71.34 RCW. To the extent that resources have shared purpose, the state may only reimburse counties to the extent such resources are necessary for and devoted to judicial services as described in this section.

(5) No filing fee shall be charged or collected for any civil commitment case subject to reimbursement under this section.

**NEW SECTION. Sec. 3.** A new section is added to chapter 71.34 RCW to read as follows:

A county may apply to the department for reimbursement of its costs in providing judicial services for civil commitment cases under this chapter, as provided in section 2 of this act.

**Sec. 4.** RCW 71.05.110 and 1997 c 112 s 7 are each amended to read as follows:

Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the ~~((costs of such services shall be borne by))~~ state shall reimburse the county in which the proceeding is held ~~((subject however to the responsibility for costs provided in RCW 71.05.320(2)))~~ for the costs of such legal services, as provided in section 2 of this act.

**Sec. 5.** RCW 71.34.330 and 1985 c 354 s 23 are each amended to read as follows:

Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the ~~((costs of these legal services shall be borne by))~~ state shall reimburse the county in which the proceeding is held for the costs of such legal services, as provided in section 2 of this act.

**Sec. 6.** RCW 71.05.230 and 2009 c 293 s 3 and 2009 c 217 s 2 are each reenacted and amended to read as follows:

A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment. ~~((There shall be no fee for filing petitions for fourteen days of involuntary intensive~~

~~treatment.))~~ A petition may only be filed if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by:

(a) Two physicians;

(b) One physician and a mental health professional;

(c) Two psychiatric advanced registered nurse practitioners;

(d) One psychiatric advanced registered nurse practitioner and a mental health professional; or

(e) A physician and a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility.

**Sec. 7.** RCW 71.24.160 and 2001 c 323 s 15 are each amended to read as follows:

The regional support networks shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. Maintenance of effort funds devoted to judicial services related to involuntary commitment reimbursed under section 2 of this act must be expended for other purposes that further treatment for mental health and chemical dependency disorders.

**Sec. 8.** RCW 71.24.300 and 2008 c 261 s 4 are each amended to read as follows:

(1) Upon the request of a tribal authority or authorities within a regional support network the joint operating agreement or the county

authority shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network.

(2) The roles and responsibilities of the county and tribal authorities shall be determined by the terms of that agreement including a determination of membership on the governing board and advisory committees, the number of tribal representatives to be party to the agreement, and the provisions of law and shall assure the provision of culturally competent services to the tribes served.

(3) The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that counties and the regional support network do not duplicate functions and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(4) If a regional support network is a private entity, the department shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network.

(5) The roles and responsibilities of the private entity and the tribal authorities shall be determined by the department, through negotiation with the tribal authority.

(6) Regional support networks shall submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties:

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, (~~court-related~~) and other services provided by the state or counties pursuant to chapter 71.05 RCW, except for judicial services subject to reimbursement under section 2 of this act.

(c) Provide within the boundaries of each regional support network evaluation and treatment services for at least ninety percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks may contract to purchase evaluation and treatment services from other networks if they are unable to provide for appropriate resources within their boundaries. Insofar as the original intent of serving persons in the community is maintained, the secretary is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each regional support network. Such exceptions are limited to:

(i) Contracts with neighboring or contiguous regions; or

(ii) Individuals detained or committed for periods up to seventeen days at the state hospitals at the discretion of the secretary.

(d) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as defined in RCW 71.24.035, and mental health services to children.

(e) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(7) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the persons with mental illness and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(8) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter, provide local oversight regarding the activities of the regional support network, and work

with the regional support network to resolve significant concerns regarding service delivery and outcomes. The department shall establish statewide procedures for the operation of regional advisory committees including mechanisms for advisory board feedback to the department regarding regional support network performance. The composition of the board shall be broadly representative of the demographic character of the region and shall include, but not be limited to, representatives of consumers and families, law enforcement, and where the county is not the regional support network, county elected officials. Composition and length of terms of board members may differ between regional support networks but shall be included in each regional support network's contract and approved by the secretary.

(9) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(10) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (6) of this section.

**Sec. 9.** RCW 71.34.300 and 1985 c 354 s 14 are each amended to read as follows:

(1) The county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. Maintenance of effort funds devoted to judicial services related to involuntary commitment reimbursed under section 2 of this act must be expended for other purposes that further treatment for mental health and chemical dependency disorders.

**NEW SECTION. Sec. 10.** The department of social and health services shall establish rules and standards for the implementation of this act in consultation with affected parties.

**NEW SECTION. Sec. 11.** This act takes effect July 1, 2012."

Correct the title.

Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler; Eddy; Frockt; Kirby; Klippert; Nealey; Orwall; Rivers and Roberts.

Referred to Committee on Ways & Means.

March 24, 2011

SSB 5540

Prime Sponsor, Committee on Transportation:  
Authorizing the use of automated school bus safety cameras. Reported by Committee on Transportation

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature recognizes that the safe transportation of children to and from school is a shared responsibility of the school district and the driving public. In order to increase public awareness of their responsibility, it is the intent of the

legislature that the state superintendent of public instruction coordinate with school districts and any other relevant agencies who voluntarily choose to participate in a national stop arm violation day annually between March 1st and May 15th.

**NEW SECTION. Sec. 2.** A new section is added to chapter 46.63 RCW to read as follows:

(1) School districts may install and operate automated school bus safety cameras on school buses to be used for the detection of violations of RCW 46.61.370(1) if the use of the cameras is approved by a vote of the school district board of directors. School districts are not required to take school buses out of service if the buses are not equipped with automated school bus safety cameras or functional automated safety cameras. Further, school districts shall be held harmless from and not liable for any criminal or civil liability arising under the provisions of this section.

(a) Automated school bus safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(b) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (2)(a)(i) of this section. The law enforcement officer issuing the notice of infraction shall include a certificate or facsimile of the notice, based upon inspection of photographs, microphotographs, or electronic images produced by an automated school bus safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated school bus safety camera may respond to the notice by mail.

(c) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (2) of this section. If appropriate under the circumstances, a renter identified under subsection (2)(a)(i) of this section is responsible for an infraction.

(d) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(e) If a school district installs and operates an automated school bus safety camera under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment. Further, any repair, replacement, or administrative work costs related to installing or repairing automated school bus safety cameras must be solely paid for by the manufacturer or vendor of the cameras. Before entering into a contract with the manufacturer or vendor of the equipment used under this subsection (1)(e), the school district must follow the competitive bid process as outlined in RCW 28A.335.190(1).

(f) Any revenue collected from infractions detected through the use of automated school bus safety cameras, less the administration and operating costs of the cameras, must be remitted to school districts for school zone safety projects as determined by the school district using the automated school bus safety cameras. The administration and operating costs of the cameras includes infraction enforcement and processing costs that are incurred by local law enforcement or local courts.

(2)(a) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction is issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(i) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred;

(ii) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection (2)(a)(ii) must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(iii) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

(b) Timely mailing of a statement under this subsection to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(3) For purposes of this section, "automated school bus safety camera" means a device that is affixed to a school bus that is synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a vehicle at the time the vehicle is detected for an infraction identified in RCW 46.61.370(1).

**Sec. 3.** RCW 46.61.370 and 1997 c 80 s 1 are each amended to read as follows:

(1) The driver of a vehicle upon overtaking or meeting from either direction any school bus which has stopped on the roadway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such school bus resumes motion or the visual signals are no longer activated.

(2) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150 need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(3) The driver of a vehicle upon a highway with three or more marked traffic lanes need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(4) The driver of a school bus shall actuate the visual signals required by RCW 46.37.190 only when such bus is stopped on the roadway for the purpose of receiving or discharging school children.

(5) The driver of a school bus may stop completely off the roadway for the purpose of receiving or discharging school children only when the school children do not have to cross the roadway. The school bus driver shall actuate the hazard warning lamps as defined in RCW 46.37.215 before loading or unloading school children at such stops.

(6) Except as provided in subsection (7) of this section, a person found to have committed an infraction of subsection (1) of this section shall be assessed a monetary penalty equal to twice the total penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended. Fifty percent of the money so

collected shall be deposited into the school zone safety account in the custody of the state treasurer and disbursed in accordance with RCW 46.61.440~~((3))~~ (5).

(7) An infraction of subsection (1) of this section detected through the use of an automated school bus safety camera under section 2 of this act is not a part of the registered owner's driving record under RCW 46.52.101 and 46.52.120, and must be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and 46.20.270(3). However, the amount of the fine issued for a violation of this section detected through the use of an automated school bus safety camera shall not exceed twice the monetary penalty for a violation of this section as provided under RCW 46.63.110.

**Sec. 4.** RCW 46.63.030 and 2007 c 101 s 1 are each amended to read as follows:

(1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction;

(d) When the infraction is detected through the use of a photo enforcement system under RCW 46.63.160; ~~((e))~~

(e) When the infraction is detected through the use of an automated school bus safety camera under section 2 of this act; or

(f) When the infraction is detected through the use of an automated traffic safety camera under RCW 46.63.170.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering--Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle.

**Sec. 5.** RCW 46.63.030 and 2010 c 249 s 5 are each amended to read as follows:

(1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction; ~~((e))~~

(d) When the infraction is detected through the use of an automated traffic safety camera under RCW 46.63.170; or

(e) When the infraction is detected through the use of an automated school bus safety camera under section 2 of this act.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering--Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle.

**Sec. 6.** RCW 46.63.075 and 2005 c 167 s 3 are each amended to read as follows:

(1) In a traffic infraction case involving an infraction detected through the use of a photo enforcement system under RCW 46.63.160, ~~((e))~~ detected through the use of an automated traffic safety camera under RCW 46.63.170, or detected through the use of an automated school bus safety camera under section 2 of this act, proof that the particular vehicle described in the notice of traffic infraction was in violation of any such provision of RCW 46.63.160 or 46.63.170, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(2) This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner.

**Sec. 7.** RCW 46.63.075 and 2010 c 249 s 7 are each amended to read as follows:

(1) In a traffic infraction case involving an infraction detected through the use of an automated traffic safety camera under RCW 46.63.170 or detected through the use of an automated school bus safety camera under section 2 of this act, proof that the particular vehicle described in the notice of traffic infraction was in violation of any such provision of RCW 46.63.170, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was

the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(2) This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner.

**Sec. 8.** RCW 46.16A.120 and 2010 c 161 s 430 are each amended to read as follows:

(1) Each court and government agency located in this state having jurisdiction over standing, stopping, and parking violations, the use of a photo enforcement system under RCW 46.63.160, ~~((and))~~ the use of automated traffic safety cameras under RCW 46.63.170, and the use of automated school bus safety cameras under section 2 of this act may forward to the department any outstanding:

(a) Standing, stopping, and parking violations;

(b) Photo enforcement infractions issued under RCW 46.63.030(1)(d); ~~((and))~~

(c) Automated traffic safety camera infractions issued under RCW 46.63.030(1)~~((and))~~ (f); and

(d) Automated school bus safety camera infractions issued under RCW 46.63.030(1)(e).

(2) Violations and infractions described in subsection (1) of this section must be reported to the department in the manner described in RCW 46.20.270(3).

(3) The department shall:

(a) Record the violations and infractions on the matching vehicle records; and

(b) Send notice approximately one hundred twenty days in advance of the current vehicle registration expiration date to the registered owner listing the dates and jurisdictions in which the violations occurred, the amounts of unpaid fines and penalties, and the surcharge to be collected. Only those violations and infractions received by the department one hundred twenty days or more before the current vehicle registration expiration date will be included in the notice. Violations and infractions received by the department later than one hundred twenty days before the current vehicle registration expiration date that are not satisfied will be delayed until the next vehicle registration expiration date.

(4) The department, county auditor or other agent, or subagent appointed by the director shall not renew a vehicle registration if there are any outstanding standing, stopping, and parking violations, and other infractions issued under RCW 46.63.030(1)(d) for the vehicle unless:

(a) The outstanding~~((s))~~ standing, ~~((stopping,))~~ stopping, or parking violations were received by the department within one hundred twenty days before the current vehicle registration expiration;

(b) There is a change in registered ownership; or

(c) The registered owner presents proof of payment of each violation and infraction provided in this section and the registered owner pays the surcharge required under RCW 46.17.030.

(5) The department shall:

(a) Forward a change in registered ownership information to the court or government agency who reported the outstanding violations or infractions; and

(b) Remove the outstanding violations and infractions from the vehicle record.

**Sec. 9.** RCW 46.16A.120 and 2010 c 249 s 10 are each amended to read as follows:

((1) To renew a vehicle license, an applicant shall satisfy all listed standing, stopping, and parking violations, and civil penalties issued under RCW 46.63.160 for the vehicle incurred while the vehicle was registered in the applicant's name and forwarded to the department pursuant to RCW 46.20.270(3). For the purposes of this section, "listed" standing, stopping, and parking violations, and civil

penalties issued under RCW 46.63.160 include only those violations for which notice has been received from state or local agencies or courts by the department one hundred twenty days or more before the date the vehicle license expires and that are placed on the records of the department. Notice of such violations received by the department later than one hundred twenty days before that date that are not satisfied shall be considered by the department in connection with any applications for license renewal in any subsequent license year. The renewal application may be processed by the department or its agents only if the applicant:

(a) Presents a preprinted renewal application showing no listed standing, stopping, or parking violations, or civil penalties issued under RCW 46.63.160, or in the absence of such presentation, the agent verifies the information that would be contained on the preprinted renewal application; or

(b) If listed standing, stopping, or parking violations, or civil penalties issued under RCW 46.63.160 exist, presents proof of payment and pays a fifteen dollar surcharge.

(2) The surcharge shall be allocated as follows:

(a) Ten dollars shall be deposited in the motor vehicle fund to be used exclusively for the administrative costs of the department of licensing; and

(b) Five dollars shall be retained by the agent handling the renewal application to be used by the agent for the administration of this section.

(3) If there is a change in the registered owner of the vehicle, the department shall forward the information regarding the change to the state or local charging jurisdiction and release any hold on the renewal of the vehicle license resulting from parking violations or civil penalties issued under RCW 46.63.160 incurred while the certificate of license registration was in a previous registered owner's name.

(4) The department shall send to all registered owners of vehicles who have been reported to have outstanding listed parking violations or civil penalties issued under RCW 46.63.160, at the time of renewal, a statement setting out the dates and jurisdictions in which the violations occurred as well as the amounts of unpaid fines and penalties relating to them and the surcharge to be collected.)

(1) Each court and government agency located in this state having jurisdiction over standing, stopping, and parking violations, the use of a photo toll system under RCW 46.63.160, the use of automated traffic safety cameras under RCW 46.63.170, and the use of automated school bus safety cameras under section 2 of this act may forward to the department any outstanding:

(a) Standing, stopping, and parking violations;

(b) Civil penalties for toll nonpayment detected through the use of photo toll systems issued under RCW 46.63.160;

(c) Automated traffic safety camera infractions issued under RCW 46.63.030(1)(d); and

(d) Automated school bus safety camera infractions issued under RCW 46.63.160(1)(e).

(2) Violations, civil penalties, and infractions described in subsection (1) of this section must be reported to the department in the manner described in RCW 46.20.270(3).

(3) The department shall:

(a) Record the violations, civil penalties, and infractions on the matching vehicle records; and

(b) Send notice approximately one hundred twenty days in advance of the current vehicle registration expiration date to the registered owner listing the dates and jurisdictions in which the violations, civil penalties, and infractions occurred, the amounts of unpaid fines and penalties, and the surcharge to be collected. Only those violations, civil penalties, and infractions received by the department one hundred twenty days or more before the current vehicle registration expiration date will be included in the notice. Violations, civil penalties, and infractions received by the department

later than one hundred twenty days before the current vehicle registration expiration date that are not satisfied will be delayed until the next vehicle registration expiration date.

(4) The department, county auditor or other agent, or subagent appointed by the director shall not renew a vehicle registration if there are any outstanding standing, stopping, and parking violations, and other civil penalties issued under RCW 46.63.160 for the vehicle unless:

(a) The outstanding standing, stopping, or parking violations and civil penalties were received by the department within one hundred twenty days before the current vehicle registration expiration;

(b) There is a change in registered ownership; or

(c) The registered owner presents proof of payment of each violation, civil penalty, and infraction provided in this section and the registered owner pays the surcharge required under RCW 46.17.030.

(5) The department shall:

(a) Forward a change in registered ownership information to the court or government agency who reported the outstanding violations, civil penalties, or infractions; and

(b) Remove the outstanding violations, civil penalties, and infractions from the vehicle record.

**NEW SECTION. Sec. 10.** Sections 5, 7, and 9 of this act take effect upon certification by the secretary of transportation that the new statewide tolling operations center and photo toll system are fully operational. A notice of certification must be filed with the code reviser for publication in the state register. If a certificate is not issued by the secretary of transportation by December 1, 2012, sections 5, 7, and 9 of this act are null and void."

Correct the title.

Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Klippert; Ladenburg; McCune; Morris; Moscoso; Reykdal; Rivers; Rolfes; Ryu; Shea; Takko; Upthegrove and Zeiger.

Passed to Committee on Rules for second reading.

March 22, 2011

**ESSB 5585** Prime Sponsor, Committee on Transportation: Concerning street rod and custom vehicles. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Kristiansen; Ladenburg; McCune; Moeller; Morris; Moscoso; Overstreet; Reykdal; Rivers; Rodne; Rolfes; Ryu; Shea; Takko; Upthegrove and Zeiger.

MINORITY recommendation: Do not pass. Signed by Representative Klippert.

Passed to Committee on Rules for second reading.

March 22, 2011

**SB 5589** Prime Sponsor, Senator Morton: Addressing heavy haul industrial corridors. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove,

Assistant Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Klippert; Kristiansen; Ladenburg; McCune; Moeller; Morris; Moscoso; Overstreet; Reykdal; Rivers; Rodne; Rolfes; Ryu; Shea; Takko; Upthegrove and Zeiger.

Passed to Committee on Rules for second reading.

March 24, 2011

**SSB 5590** Prime Sponsor, Committee on Financial Institutions, Housing & Insurance: Concerning lien holder requirements for certain foreclosure sales. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 61.24 RCW to read as follows:

(1) Whenever (a) consummation of a written agreement for the purchase and sale of owner-occupied residential real property would result in contractual sale proceeds that are insufficient to pay in full the obligation owed to a senior beneficiary of a deed of trust encumbering the residential real property; and (b) the seller makes a written offer to the senior beneficiary to accept the entire net proceeds of the sale in order to facilitate closing of the purchase and sale; then the senior beneficiary must, within one hundred twenty days after the receipt of the written offer, deliver to the seller, in writing, an acceptance, rejection, or counter-offer of the seller's written offer. The senior beneficiary may determine, in its sole discretion, whether to accept, reject, or counter-offer the seller's written offer.

(2) This section applies only when the written offer to the senior beneficiary is received by the senior beneficiary prior to the issuance of a notice of default. The offer must include a copy of the purchase and sale agreement. The offer must be sent to the address of the senior beneficiary or the address of a party acting as a servicer of the obligation secured by the deed of trust.

(3) A seller has a right of action for actual monetary damages incurred as a result of the senior beneficiary's failure to comply with the requirements of subsection (1) of this section.

(4) A senior beneficiary is not liable for the actions or inactions of any other lien holder.

(5)(a) This section does not apply to deeds of trust: (i) securing a commercial loan; (ii) securing obligations of a grantor who is not the borrower or a guarantor; or (iii) securing a purchaser's obligations under a seller-financed sale.

(b) This section does not apply to beneficiaries that are exempt from section 7, chapter \_\_\_ (2SHB 1362), laws of 2011, if enacted, or if not enacted, to beneficiaries that conduct fewer than two hundred fifty trustee sales per year.

(6) This section does not alter a beneficiary's right to issue a notice of default and does not lengthen or shorten any time period imposed or required under this chapter.

**Sec. 2.** RCW 61.24.127 and 2009 c 292 s 6 are each amended to read as follows:

(1) The failure of the borrower or grantor to bring a civil action to enforce a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages asserting:

(a) Common law fraud or misrepresentation;

(b) A violation of Title 19 RCW; ~~((or))~~

(c) Failure of the trustee to materially comply with the provisions of this chapter; or

(d) A violation of section 1 of this act.



(2) The nonwaived claims listed under subsection (1) of this section are subject to the following limitations:

(a) The claim must be asserted or brought within two years from the date of the foreclosure sale or within the applicable statute of limitations for such claim, whichever expires earlier;

(b) The claim may not seek any remedy at law or in equity other than monetary damages;

(c) The claim may not affect in any way the validity or finality of the foreclosure sale or a subsequent transfer of the property;

(d) A borrower or grantor who files such a claim is prohibited from recording a lis pendens or any other document purporting to create a similar effect, related to the real property foreclosed upon;

(e) The claim may not operate in any way to encumber or cloud the title to the property that was subject to the foreclosure sale, except to the extent that a judgment on the claim in favor of the borrower or grantor may, consistent with RCW 4.56.190, become a judgment lien on real property then owned by the judgment debtor; and

(f) The relief that may be granted for judgment upon the claim is limited to actual damages. However, if the borrower or grantor brings in the same civil action a claim for violation of chapter 19.86 RCW, arising out of the same alleged facts, relief under chapter 19.86 RCW is limited to actual damages, treble damages as provided for in RCW 19.86.090, and the costs of suit, including a reasonable attorney's fee.

~~((4)-(3))~~ (3) This section applies only to foreclosures of owner-occupied residential real property.

~~((5)-(4))~~ (4) This section does not apply to the foreclosure of a deed of trust used to secure a commercial loan.

**Sec. 3.** RCW 61.24.005 and 2009 c 292 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) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

(3) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

(4) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(5) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

(6) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

(7) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

(8) "Owner-occupied" means property that is the principal residence of the borrower.

(9) "Person" means any natural person, or legal or governmental entity.

(10) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

(11) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit.

(12) "Senior beneficiary" means the beneficiary of a deed of trust that has priority over any other deeds of trust encumbering the same residential real property."

(13) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter 59.18 RCW or other building with four or fewer residential units that is the principal residence of a tenant subject to chapter 59.18 RCW.

~~((13))~~ (14) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

~~((14))~~ (15) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter."

Correct the title.

Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler; Eddy; Frock; Kirby; Klippert; Orwall; Rivers and Roberts.

MINORITY recommendation: Do not pass. Signed by Representative Nealey.

Passed to Committee on Rules for second reading.

March 22, 2011

SSB 5614

Prime Sponsor, Committee on Labor, Commerce & Consumer Protection: Establishing procedures for requesting the funds necessary to implement the compensation and fringe benefit provisions of bargaining agreements with the University of Washington under chapter 41.80 RCW. Reported by Committee on Labor & Workforce Development

MAJORITY recommendation: Do pass as amended.

On page 4, beginning on line 8, after "appropriations" strike "of ten thousand dollars or more"

On page 4, beginning on line 15, strike all of subsections (A) and (B) and insert the following:

"(A) If appropriations of less than ten thousand dollars are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered.

(B) If appropriations of ten thousand dollars or more are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request:

(I) Has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered; and

(II) Has been certified by the director of the office of financial management as being feasible financially for the state.

(C) If the director of the office of financial management does not certify a request under (c)(ii)(B) of this subsection as being feasible financially for the state, the parties shall enter into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the compensation and fringe benefit provisions of the modified collective

bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature."

Signed by Representatives Sells, Chair; Reykdal, Vice Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan; Green; Miloscia; Moeller; Ormsby; Roberts; Taylor and Warnick.

Referred to Committee on Ways & Means.

March 24, 2011

2SSB 5636 Prime Sponsor, Committee on Ways & Means: Concerning the University Center of North Puget Sound. Reported by Committee on Higher Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 28B.30 RCW to read as follows:

(1) The legislature finds that access to baccalaureate and graduate degree programs continues to be limited for residents of north Snohomish, Island, and Skagit counties. Studies conducted by the state board for community and technical colleges, the higher education coordinating board, and the council of presidents confirm that enrollment in higher education compared to demand in this geographic region lags behind enrollment in other parts of the state, particularly for upper-division courses leading to advanced degrees.

(2) The legislature also finds that access to high employer demand programs of study is imperative for the state's global competitiveness and economic prosperity, particularly those degrees in the science, technology, engineering, and mathematics (STEM) fields that align with the workforce skill demands of the regional economy, that support the aerospace industry, and provide skilled undergraduate and graduate-degree engineers required by the largest employers in the aerospace industry cluster.

(3) The legislature finds that meeting the long-range goal of greatly expanded access for the population of the region to the widest array of baccalaureate and graduate programs can best be accomplished by assigning responsibility to a research university with multiple experiences in similar settings.

(4) Management and leadership of the University Center of North Puget Sound is assigned to Washington State University to meet the needs of the Everett metropolitan area and the north Snohomish, Island, and Skagit county region and the state of Washington for baccalaureate and graduate degrees offered by a state university. The chief executive officer of the University Center of North Puget Sound is the director who reports to the president of Washington State University. The director shall manage the activities and logistics of operating the center, make policy and planning recommendations to the council in subsection (5) of this section, and implement decisions of the council.

(5)(a) Washington State University and Everett Community College must collaborate with community leaders, and other four-year institutions of higher education that offer programs at the University Center of North Puget Sound to serve the varied interests of students in the region. To this end, a coordinating and planning council must be established to be responsible for long-range and strategic planning, interinstitutional collaboration, collaboration with the community served, and dispute resolution for the center. The following individuals shall comprise the coordinating and planning council:

(i) The president of Washington State University, or his or her designee;

(ii) The president of Everett Community College;

(iii) Two representatives of two other institutions of higher education that offer baccalaureate or graduate degree programs at the center;

(iv) The director of the council, as the nonvoting chair;

(v) A community leader appointed by the president of Everett Community College; and

(vi) A community leader appointed by the mayor of Everett.

(b) The coordinating and planning council may appoint other groups, as appropriate, to advise on administration and operations, and may alter its own composition by agreement of all the members.

(6)(a) Washington State University shall assume leadership of the center upon completion and approval by the legislature as provided under (d) of this subsection of a strategic plan for meeting the academic needs of the region and successful establishment of an engineering degree program. The strategic plan must build on the strengths of the institutions, reflecting each institution's mission, in order to provide the region with the highest standard of educational programs, research, and service to the community. The strategic plan must include a multiyear budget that addresses both operating and capital expenses required to effectively implement the plan. The strategic plan shall be developed with the collaboration of the University Center at Everett Community College and all the institutions of higher education that provide baccalaureate degrees at the University Center, and community leaders.

(b) Center partners must implement the strategic plan with careful attention to the academic and professional standards established and maintained by each institution and by the appropriate accrediting bodies, and to the historic role of each institution's governing board in setting policy.

(c) The strategic plan must address expansion of the range and depth of educational opportunities in the region and include strategies that:

(i) Build upon baccalaureate and graduate degree offerings at the center;

(ii) Meet projected student enrollment demands for baccalaureate, graduate, and certificate programs in the region;

(iii) Meet employers' needs for skilled workers by expanding high employer demand programs of study as defined in RCW 28B.50.030, with an initial and ongoing emphasis by Washington State University on undergraduate and graduate science, technology, mathematics, and engineering degree programs, including a variety of engineering disciplines such as civil, mechanical, aeronautical, and aerospace manufacturing;

(iv) Coordinate delivery of lower and upper division courses to maximize student opportunities and resources; and

(v) Transfer budget support and resources for the center from Everett Community College to Washington State University.

(d) The strategic plan must be completed by December 1, 2012, and submitted to the legislature for review. The strategic plan shall be considered approved if the legislature does not take further action on the strategic plan during the 2013 legislative session. The transfer of the responsibility for the management and operation of the University Center of North Puget Sound to Washington State University must occur by July 1, 2014.

(7)(a) Academic programming and delivery at the center must be developed in accordance with the missions of Washington State University, Everett Community College, and other institutions of higher education that have a presence at the center.

(b) Each institution shall abide by the guidelines for university centers adopted by the higher education coordinating board.

(c) Each institution shall award all degrees and certificates granted in the programs it delivers at the center.

(d) The coordinating council described in subsection (5) of this section shall establish a process for prioritizing new programs and revising existing programs that facilitates timeliness of new offerings, recognizes the internal processes of the proposing institutions, and addresses each proposal's fit with the needs of the region.

(8)(a) Washington State University shall review center expansion needs and consider capital facilities funding at least annually. Washington State University and Everett Community College must cooperate in preparing funding requests and bond financing for submission to the legislature on behalf of development at the center, in accordance with each institution's process and priorities for advancing legislative requests.

(b) Washington State University shall design, construct, and manage any facility developed at the center. Any facility developed at the center with Everett Community College capital funding must be designed by Everett Community College in consultation with Washington State University. Building construction may be managed by Washington State University via an interagency agreement which details responsibility and associated costs. Building operations and management for all facilities at the center must be governed by the infrastructure and operating cost allocation method described in subsection (9) of this section.

(9) Washington State University has responsibility for infrastructure development and maintenance for the center. All infrastructure operating and maintenance costs are to be shared in what is deemed to be an equitable and fair manner based on space allocation, special cost, and other relevant considerations. Washington State University may make infrastructure development and maintenance decisions in consultation with the council described in subsection (5) of this section.

(10) In the event that conflict cannot be resolved through the coordinating council described in subsection (5) of this section the higher education coordinating board dispute resolution must be employed.

**Sec. 2.** RCW 28B.50.795 and 2010 1st sp.s. c 25 s 1 are each amended to read as follows:

(1) ((RCW 28B.50.901 assigns responsibility for the north Snohomish, Island, and Skagit counties' higher education consortium to Everett Community College. In April of 2009, Everett Community College opened Gray Wolf Hall, the new home of the University Center of North Puget Sound. The University Center currently offers over twenty bachelor's and master's degrees from six partner universities.

(2))) Although Everett Community College offers an associate degree nursing program that graduates approximately seventy to ninety students per year, the University Center does not offer a bachelor of science in nursing. Some graduates of the Everett Community College program are able to articulate to the bachelor of science in nursing program offered by the University of Washington-Bothell at its Bothell campus or in Mt. Vernon but current capacity is not sufficient for all of the graduates who are both interested and qualified.

((3)) (2) Despite recent growth in nursing education capacity, shortages still persist for registered nurses. According to a June 2007 study by the Washington, Wyoming, Alaska, Montana, and Idaho center for health workforce studies, the average age of Washington's registered nurses was forty-eight years. More than a third were fifty-five years of age or older. Consequently, the high rate of registered nurses retiring from nursing practice over the next two decades will significantly reduce the supply. This reduction comes at the same time as the state's population grows and ages. The registered nurse education capacity in Washington has a large impact on the supply of registered nurses in the state. If the rate of graduation in registered nursing does not increase, projections show that supply in Washington will begin to decline by 2015. In contrast, if graduation

rates increased by four hundred per year, the supply of registered nurses would meet estimated demand by the year 2021.

((4)) (3) Subject to specific funding to support up to fifty full-time equivalent students in a bachelor of nursing program, the University Center ((at Everett Community College)) of North Puget Sound, in partnership with the University of Washington-Bothell, shall offer a bachelor of science in nursing program with capacity for up to fifty full-time students.

**NEW SECTION. Sec. 3.** (1) This act takes effect only after the higher education coordinating board determines whether a needs assessment and analysis is required and, if so, conducts a needs assessment and viability determination under RCW 28B.76.230 and recommends that the provisions in section 1 of this act occur.

(2) The higher education coordinating board must make a recommendation under subsection (1) of this section by July 1, 2012.

(3) The higher education coordinating board shall notify the office of financial management, the legislature, and the code reviser's office of the board's recommendations regarding the provisions in section 1 of this act.

**NEW SECTION. Sec. 4.** RCW 28B.50.901 (Regional higher education consortium management and leadership--Everett Community College--Educational plan) and 2005 c 258 s 13 are each repealed."

Correct the title.

Signed by Representatives Seaquist, Chair; Carlyle, Vice Chair; Haler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Buys; Fagan; Hasegawa; Probst; Reykdal; Sells; Springer; Warnick and Zeiger.

Referred to Committee on Ways & Means.

March 24, 2011

ESSB 5656 Prime Sponsor, Committee on Human Services & Corrections: Creating a state Indian child welfare act. Reported by Committee on Early Learning & Human Services

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** SHORT TITLE. This chapter shall be known and cited as the "Washington state Indian child welfare act."

**NEW SECTION. Sec. 2.** APPLICATION. This chapter shall apply in all child custody proceedings as that term is defined in this chapter. Whenever there is a conflict between chapter 13.32A, 13.34, 13.36, 26.10, or 26.33 RCW, the provisions of this chapter shall apply.

**NEW SECTION. Sec. 3.** INTENT. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political,

cultural, social, and spiritual relationship with the child's tribe and tribal community.

It is the intent of the legislature that this chapter is a step in clarifying existing laws and codifying existing policies and practices. This chapter shall not be construed to reject or eliminate current policies and practices that are not included in its provisions.

The legislature further intends that nothing in this chapter is intended to interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by section 109 of the federal Indian child welfare act. The legislature finds that this chapter specifies the minimum requirements that must be applied in a child custody proceeding and does not prevent the department from providing a higher standard of protection to the right of any Indian child, parent, Indian custodian, or Indian child's tribe.

It is also the legislature's intent that the department's policy manual on Indian child welfare, the tribal-state agreement, and relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian child welfare act, this chapter, and other relevant state laws.

**NEW SECTION. Sec. 4. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter 13.34 RCW and this chapter where the department or a supervising agency as defined in RCW 74.13.020 has a statutory or contractual duty to provide services to, or procure services for, the parent or parents or Indian custodian, or is providing services to a parent or parents or Indian custodian pursuant to a disposition order entered pursuant to RCW 13.34.130, the department or supervising agency shall make timely and diligent efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter 13.34 RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent, parents, or Indian custodian prior to filing the dependency petition, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such services.

(ii) In any dependency proceeding under chapter 13.34 RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department or supervising agency must show to the court that it has actively worked with the parent, parents, or Indian custodian in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter 13.34 RCW in which the department or supervising agency provided services to the parent, parents, or Indian custodian, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan beyond simply providing referrals to such services.

(b) In any foster care placement or termination of parental rights proceeding in which the petitioner does not otherwise have a statutory or contractual duty to directly provide services to, or procure services for, the parent or Indian custodian, "active efforts" means a documented, concerted, and good faith effort to facilitate the parent's or Indian custodian's receipt of and engagement in services capable of meeting the criteria set out in (a) of this subsection.

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home placement is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and

(d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

These terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a dissolution proceeding of custody to one of the parents.

(4) "Court of competent jurisdiction" means a federal court, or a state court that entered an order in a child custody proceeding involving an Indian child, as long as the state court had proper subject matter jurisdiction in accordance with this chapter and the laws of that state, or a tribal court that had or has exclusive or concurrent jurisdiction pursuant to 25 U.S.C. Sec. 1911.

(5) "Department" means the department of social and health services and any of its divisions. "Department" also includes supervising agencies as defined in RCW 74.13.020(12) with which the department entered into a contract to provide services, care, placement, case management, contract monitoring, or supervision to children subject to a petition filed under chapter 13.34 or 26.33 RCW.

(6) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. Sec. 1606.

(7) "Indian child" means an unmarried and unemancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or step-parent, even following termination of the marriage.

(9) "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

(10) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child, or to whom the parent has transferred temporary care, physical custody, and control of an Indian child.

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. Sec. 1602(c).

(12) "Member" and "membership" means a determination by an Indian tribe that a person is a member or eligible for membership in that Indian tribe.

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established under chapter 26.26 RCW or the applicable laws of other states.

(14) "Secretary of the interior" means the secretary of the United States department of the interior.

(15) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption.

**NEW SECTION. Sec. 5. DETERMINATION OF INDIAN STATUS.** Any party seeking the foster care placement of, termination of parental rights over, or the adoption of a child must make a good faith effort to determine whether the child is an Indian child. This shall be done by consultation with the child's parent or parents, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child, and by contacting any Indian tribe in which the child may be a member or may be eligible for membership. Preliminary contacts for the purpose of making a good faith effort to determine a child's possible Indian status, do not constitute legal notice as required by section 7 of this act.

**NEW SECTION. Sec. 6. JURISDICTION.** (1) An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, the tribe has expressly declined to exercise its exclusive jurisdiction, or the state is exercising emergency jurisdiction in strict compliance with section 14 of this act.

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

**NEW SECTION. Sec. 7. NOTICE.** (1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or

tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs. The secretary of the interior has fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

(2) The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interests of the Indian child and protect the interests of the child's tribe.

(3)(a) A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is an Indian child;

(b) A written determination by an Indian tribe that a child is not a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is not a member or eligible for membership in that tribe. Such determinations are presumptively those of the tribe where submitted in the form of a tribal resolution, or signed by or testified to by the person(s) authorized by the tribe's governing body to speak for the tribe, or by the tribe's agent designated to receive notice under the federal Indian child welfare act where such designation is published in the federal register;

(c) Where a tribe provides no response to notice under section 7 of this act, such nonresponse shall not constitute evidence that the child is not a member or eligible for membership. Provided, however, that under such circumstances the party asserting application of the federal Indian child welfare act, or this chapter, will have the burden of proving by a preponderance of the evidence that the child is an Indian child.

(4)(a) Where a child has been determined not to be an Indian child, any party to the proceeding, or an Indian tribe that subsequently determines the child is a member, may, during the pendency of any child custody proceeding to which this chapter or the federal Indian child welfare act applies, move the court for redetermination of the child's Indian status based upon new evidence, redetermination by the child's tribe, or newly conferred federal recognition of the tribe.

(b) This subsection (4) does not affect the rights afforded under 25 U.S.C. Sec. 1914 or section 19(2) of this act.

**NEW SECTION. Sec. 8. TRANSFER OF JURISDICTION.** (1) In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons:

- (a) Either of the child's parents;
- (b) The child's Indian custodian;
- (c) The child's tribe; or
- (d) The child, if age twelve or older.

The transfer shall be subject to declination by the tribe. The tribe shall have seventy-five days to affirmatively respond to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within the seventy-five day period shall be construed as a declination to accept transfer of the case.

(2) If the child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(3) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court shall not transfer the proceeding.

(4) Following entry of an order transferring jurisdiction to the Indian child's tribe:

(a) Upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the child custody proceeding without prejudice.

(b) Pending receipt of such tribal court order, the state court may conduct additional hearings and enter orders which strictly comply with the requirements of the federal Indian child welfare act and this chapter. The state court shall not enter a final order in any child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed, while awaiting receipt of a tribal court order accepting jurisdiction, or in the absence of a tribal court order or other formal written declination of jurisdiction.

(c) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody matter in strict compliance with the federal Indian child welfare act, this chapter, and any applicable tribal-state agreement.

**NEW SECTION. Sec. 9. INTERVENTION.** The Indian child, the Indian child's tribe or tribes, and the Indian custodian have the right to intervene at any point in any child custody proceeding involving the Indian child.

**NEW SECTION. Sec. 10. FULL FAITH AND CREDIT.** The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings.

**NEW SECTION. Sec. 11. RIGHT TO COUNSEL.** In any child custody proceeding under this chapter in which the court determines the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian shall have the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child upon a finding that the appointment is in the best interests of the Indian child.

**NEW SECTION. Sec. 12. RIGHT TO ACCESS TO EVIDENCE.** Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based.

**NEW SECTION. Sec. 13. EVIDENTIARY REQUIREMENTS.** (1) A party seeking to effect an involuntary foster care placement of or the involuntary termination of parental rights to an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) No involuntary foster care placement may be ordered in a child custody proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For purposes of this subsection, any harm that may result from interfering with the bond or attachment between the foster parent and the child shall not be the sole basis or primary reason for continuing the child in foster care.

(3) No involuntary termination of parental rights may be ordered in a child custody proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For the purposes of this subsection, any harm that may result from interfering with the bond or attachment that may have formed between the child and a foster care

provider shall not be the sole basis or primary reason for termination of parental rights over an Indian child.

(4)(a) For purposes of this section, "qualified expert witness" means a person who provides testimony in a proceeding under this chapter to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. In any proceeding in which the child's Indian tribe has intervened pursuant to section 9 of this act or, if the department is the petitioner and the Indian child's tribe has entered into a local agreement with the department for the provision of child welfare services, the petitioner shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices. The petitioner shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required. If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner may proceed to identify such a witness pursuant to (b) of this subsection.

(b) In any proceeding in which the child's Indian tribe has not intervened or entered into a local agreement with the department for the provision of child welfare services, or a child's Indian tribe has not responded to a request to identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner shall provide a "qualified expert witness" who meets one or more of the following requirements in descending order of preference:

(i) A member of the child's Indian tribe or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices for this purpose;

(ii) Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe;

(iii) Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or

(iv) A professional person having substantial education and experience in the area of his or her specialty.

(c) When the petitioner is the department or a supervising agency, the currently assigned department or agency caseworker or the caseworker's supervisor may not testify as a "qualified expert witness" for purposes of this section. Nothing in this section shall bar the assigned department or agency caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes in a proceeding under this chapter. Nothing in this section shall bar other department or supervising agency employees with appropriate expert qualifications or experience from testifying as a "qualified expert witness" in a proceeding under this chapter. Nothing in this section shall bar the petitioner or any other party in a proceeding under this chapter from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court including the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child.

**NEW SECTION. Sec. 14. EMERGENCY REMOVAL OF AN INDIAN CHILD.** (1) Notwithstanding any other provision of federal or state law, nothing shall be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster

home, under applicable state law, to prevent imminent physical damage or harm to the child.

(2) The department or law enforcement agency shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the federal Indian child welfare act and this chapter to transfer the child to the jurisdiction of the appropriate Indian tribe or restore the child to the child's parent or Indian custodian, if appropriate.

(3) When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding. This notice shall not constitute the notice required under section 7 of this act for purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

**NEW SECTION. Sec. 15. CONSENT.** (1) If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court must also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

(3) In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the child shall be returned to the parent.

(4) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress. Upon a finding that such consent was obtained through fraud or duress the court shall vacate the decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under this section unless otherwise allowed by state law.

**NEW SECTION. Sec. 16. IMPROPER REMOVAL OF AN INDIAN CHILD.** If a petitioner in a child custody proceeding under this chapter has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.

**NEW SECTION. Sec. 17. REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR FOSTER CARE PLACEMENT.** (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the biological parent or prior Indian custodian may petition to have the child returned to their custody and the court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or prior Indian custodian is not in the best interests of the Indian child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

**NEW SECTION. Sec. 18. PLACEMENT PREFERENCES.** (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, a good faith effort will be made to place the Indian child:

- (a) In the least restrictive setting;
  - (b) Which most approximates a family situation;
  - (c) Which is in reasonable proximity to the Indian child's home; and
  - (d) In which the Indian child's special needs, if any, will be met.
- (2) In any foster care or preadoptive placement, a preference shall be given, in absence of good cause to the contrary, to the child's placement with one of the following:

- (a) A member of the child's extended family.
- (b) A foster home licensed, approved, or specified by the child's tribe.
- (c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
- (d) A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(e) A non-Indian child foster care agency approved by the child's tribe.

- (f) A non-Indian family that is committed to:
  - (i) Promoting and allowing appropriate extended family visitation;

- (ii) Establishing, maintaining, and strengthening the child's relationship with his or her tribe or tribes; and

- (iii) Participating in the cultural and ceremonial events of the child's tribe.

(3) In the absence of good cause to the contrary, any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

- (a) Extended family members;
- (b) An Indian family of the same tribe as the child;
- (c) An Indian family that is of a similar culture to the child's tribe;
- (d) Another Indian family; or

(e) Any other family which can provide a suitable home for an Indian child, such suitability to be determined in consultation with the Indian child's tribe or, in proceedings under chapter 13.34 RCW where the Indian child is in the custody of the department or a supervising agency and the Indian child's tribe has not intervened or participated, the local Indian child welfare advisory committee.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3) of this section, if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.

(5) Where appropriate, the preference of the Indian child or his or her parent shall be considered by the court. Where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(6) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section shall prevent the department or the court from placing the child with a parent to effectuate a permanent plan regardless of the parent's relationship to the child's tribe.

**NEW SECTION. Sec. 19. COMPLIANCE.** The department, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian child welfare act and this chapter. These standards and procedures and the monitoring methods shall also be integrated into the department's child welfare contracting and contract monitoring process.

**NEW SECTION. Sec. 20. SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**Sec. 21.** RCW 13.32A.152 and 2004 c 64 s 5 are each amended to read as follows:

(1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

~~(3) ((a) Whenever) When a child in need of services petition is filed by the department, and the court or the petitioning party knows or has reason to know that an Indian child is involved, the ((petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.) provisions of chapter 13.--- RCW (the new chapter created in section 35 of this act) apply.~~

**Sec. 22.** RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s 10, and 2010 c 94 s 6 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(9) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(10) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(11) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(12) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, disability lifeline benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(13) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW



or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(15) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(16) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in ~~((25 U.S.C. Sec. 1903(4)))~~ section 4 of this act.

(17) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

**Sec. 23.** RCW 13.34.040 and 2004 c 64 s 3 are each amended to read as follows:

(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, these officers shall, to the extent possible, first determine if a petition is reasonably justifiable. Each petition shall be verified and contain a statement of facts constituting a dependency, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of the alleged dependent child.

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If the

child is an Indian child ~~((as defined under the Indian child welfare act, the provisions of the act))~~ chapter 13.--- RCW (the new chapter created in section 35 of this act) shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the federal Indian child welfare act and chapter 13.--- RCW (the new chapter created in section 35 of this act) have been satisfied.

**Sec. 24.** RCW 13.34.065 and 2009 c 520 s 22, 2009 c 491 s 1, 2009 c 477 s 3, and 2009 c 397 s 2 are each reenacted and amended to read as follows:

(1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount

consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in ((25 U.S.C. Sec. 1903)) section 4 of this act, whether the provisions of the federal Indian child welfare act or chapter 13--- RCW (the new chapter created in section 35 of this act) apply, and whether there is compliance with the federal Indian child welfare act and chapter 13-- - RCW (the new chapter created in section 35 of this act), including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department.

**Sec. 25.** RCW 13.34.070 and 2004 c 64 s 4 are each amended to read as follows:

(1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:  
VIOLATION OF THIS ORDER

IS SUBJECT TO PROCEEDING  
FOR CONTEMPT OF COURT  
PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department employee.

(10)~~((a))~~ Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child as defined in section 4 of this act is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall ~~((be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~((b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court))~~ comply with section 7 of this act.

**Sec. 26.** RCW 13.34.105 and 2010 c 180 s 3 are each amended to read as follows:

(1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

(a) To investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child;

(b) To meet with, interview, or observe the child, depending on the child's age and developmental status, and report to the court any views or positions expressed by the child on issues pending before the court;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order;

(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band;

(e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties;

(f) To represent and be an advocate for the best interests of the child; ~~((and))~~

(g) To inform the child, if the child is twelve years old or older, of his or her right to request counsel and to ask the child whether he or she wishes to have counsel, pursuant to RCW 13.34.100(6). The guardian ad litem shall report to the court that the child was notified of this right and indicate the child's position regarding appointment of counsel. The guardian ad litem shall report to the court his or her independent recommendation as to whether appointment of counsel is in the best interest of the child; and

(h) In the case of an Indian child as defined in section 4 of this act, know, understand, and advocate the best interests of the Indian child.

(2) A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children's ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100.

**Sec. 27.** RCW 13.34.130 and 2010 c 288 s 1 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. The court may not order an Indian child, as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to

provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW. Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260. The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a) when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in this subsection (1)(b). The court shall consider the child's existing relationships and attachments when determining placement.

(2) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in ~~((RCW 13.34.250 and in 25 U.S.C. Sec. 1915))~~ section 18 of this act.

(3) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(5) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(7) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court.

**Sec. 28.** RCW 13.34.132 and 2000 c 122 s 16 are each amended to read as follows:

A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

- (1) The court has removed the child from his or her home pursuant to RCW 13.34.130;
- (2) Termination is recommended by the department or the supervising agency;
- (3) Termination is in the best interests of the child; and
- (4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:
  - (a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;
  - (b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;
  - (c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;
  - (d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;
  - (e) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;
  - (f) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;
  - (g) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in ~~(the~~

~~Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903))~~  
section 4 of this act, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(h) An infant under three years of age has been abandoned;

(i) Conviction of the parent, when a child has been born of the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020.

**Sec. 29.** RCW 13.34.136 and 2009 c 520 s 28 and 2009 c 234 s 5 are each reenacted and amended to read as follows:

(1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in section 4 of this act; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(5))~~ (6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect

the child's health, safety, or welfare. The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(~~(5)~~) (6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(~~(3)~~) (4). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or

in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe.

**Sec. 30.** RCW 13.34.190 and 2010 c 288 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, after hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child only if the court finds that:

(a)(i) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or

(ii) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

(iii) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or

(iv) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and

(b) Such an order is in the best interests of the child.

(2) ~~The provisions of chapter 13.--- RCW (the new chapter created in section 35 of this act) must be followed in any proceeding under this chapter for termination of the parent-child relationship of an Indian child as defined in ((25 U.S.C. Sec. 1903, no termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child)) section 4 of this act.~~

**Sec. 31.** RCW 26.10.034 and 2004 c 64 s 1 are each amended to read as follows:

(1)(~~(a)~~) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ((25 U.S.C. Sec. 1903)) section 4 of this act. If the child is an Indian child ((as defined under the Indian child welfare act, the provisions of the act)), chapter 13.--- RCW (the new chapter created in section 35 of this act) shall apply.

((b) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined,

notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(c) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.)

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice (~~requirements~~) and evidentiary requirements under the federal Indian child welfare act and chapter 13.--- RCW (the new chapter created in section 35 of this act) have been satisfied.

**Sec. 32.** RCW 26.33.040 and 2004 c 64 s 2 are each amended to read as follows:

(1)(a) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in (~~25 U.S.C. Sec. 1903~~) section 4 of this act. If the child is an Indian child (~~(as defined under the Indian child welfare act, the provisions of the act)~~), chapter 13.--- RCW (the new chapter created in section 35 of this act) shall apply.

(b) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice, consent, and evidentiary requirements (~~(and evidentiary requirements)~~) under the federal Indian child welfare act, chapter 13.--- RCW (the new chapter created in section 35 of this act), and this section have been satisfied.

(c) In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine whether an Indian child (~~(as defined under the Indian child welfare act, 25 U.S.C. Sec. 1903,)~~) is involved.

(d) Whenever the court or the petitioning party knows or has reason to know that an Indian child is involved in any termination, relinquishment, or placement proceeding under this chapter, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(e) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

(f) No termination, relinquishment, or placement proceeding shall be held until at least ten days after receipt of notice by the tribe. If the tribe requests, the court shall grant the tribe up to twenty additional days to prepare for such proceeding.

(2) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the (~~(Soldiers and Sailors)~~) federal servicemembers civil relief act of ((1940)) 2004, 50 U.S.C. Sec. 501 et seq. applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding

that the (~~(Soldiers and Sailors)~~) federal servicemembers civil relief act of ((1940)) 2004 does or does not apply.

**Sec. 33.** RCW 26.33.240 and 1987 c 170 s 8 are each amended to read as follows:

(1) After the reports required by RCW 26.33.190 and 26.33.200 have been filed, the court shall schedule a hearing on the petition for adoption upon request of the petitioner for adoption. Notice of the date, time, and place of hearing shall be given to the petitioner and any person or agency whose consent to adoption is required under RCW 26.33.160, unless the person or agency has waived in writing the right to receive notice of the hearing. If the child is an Indian child, notice shall also be given to the child's tribe. Notice shall be given in the manner prescribed by RCW 26.33.310.

(2) Notice of the adoption hearing shall also be given to any person who or agency which has prepared a preplacement report. The notice shall be given in the manner prescribed by RCW 26.33.230.

(3) If the court determines, after review of the petition, preplacement and post-placement reports, and other evidence introduced at the hearing, that all necessary consents to adoption are valid or have been dispensed with pursuant to RCW 26.33.170 and that the adoption is in the best interest of the adoptee, and, in the case of an adoption of an Indian child, that the adoptive parents are within the placement preferences of (~~25 U.S.C. Sec. 1915~~) section 18 of this act or good cause to the contrary has been shown on the record, the court shall enter a decree of adoption pursuant to RCW 26.33.250.

(4) If the court determines the petition should not be granted because the adoption is not in the best interest of the child, the court shall make appropriate provision for the care and custody of the child.

**Sec. 34.** RCW 74.13.350 and 2004 c 183 s 4 are each amended to read as follows:

It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed (~~(in writing before the court and filed with the court as provided in RCW 13.34.245)~~) in accordance with section 15 of this act. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The

department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents.

**NEW SECTION. Sec. 35.** Sections 1 through 20 of this act constitute a new chapter in Title 13 RCW.

**NEW SECTION. Sec. 36.** RCW 13.34.250 (Preference characteristics when placing Indian child in foster care home) and 1979 c 155 s 53 are each repealed."

Correct the title.

Signed by Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson; Goodman; Johnson and Orwall.

MINORITY recommendation: Do not pass. Signed by Representative Overstreet.

Passed to Committee on Rules for second reading.

March 24, 2011

**SSB 5658** Prime Sponsor, Committee on Transportation: Concerning the sale or exchange of surplus property by the department of transportation. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove,

Assistant Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Klippert; Ladenburg; McCune; Morris; Moscoso; Reykdal; Rivers; Rolfes; Ryu; Takko; Uptegrove and Zeiger.

MINORITY recommendation: Do not pass. Signed by Representative Shea.

Passed to Committee on Rules for second reading.

March 24, 2011

**SSB 5662** Prime Sponsor, Committee on Ways & Means: Concerning preferences for in-state contractors bidding on public works. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 39.04 RCW to read as follows:

(1) The department of general administration must conduct a survey to determine which states provide a preference for its resident contractors bidding on public works projects, and provide details on the type of preference, the amount of the preference, and how the preference is applied. The survey must be completed by November 1, 2011, and by December 1, 2011, the department must submit a report to the appropriate committees of the legislature on the results of the survey. The report must also include recommendations necessary to implement the intent of this act.

(2) The department of general administration must distribute the results of the survey, along with the requirements of this act, to all state and local agencies with the authority to procure public works. The department must adopt rules and procedures to implement the reciprocity requirements in subsection (3) of this section.

(3) In any bidding process for public works in which a bid is received from a non-resident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that non-resident contractor. This subsection does not take effect until the department of general administration has adopted the rules and procedures for reciprocity under subsection (2) of this section.

(4) A non-resident contractor from a state that provides a percentage bid preference means a contractor that:

(a) Is not registered or licensed, or otherwise legally authorized to perform public works construction in Washington; and

(b) At the time of bidding on a public works project, does not have a physical office located in Washington.

(5) The state of residence for a non-resident contractor shall be the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

(6) This section does not apply to public works procured pursuant to RCW 39.04.155, RCW 39.04.280, or any other procurement where competitive bidding is exempt.

**NEW SECTION. Sec. 2.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or municipality, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies or municipalities directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies and municipalities concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state and municipalities."



Correct the title.

Signed by Representatives Hunt, Chair; Taylor, Ranking Minority Member; Darneille; Dunshee; Hurst; McCoy and Miloscia.

MINORITY recommendation: Do not pass. Signed by Representatives Appleton, Vice Chair; Overstreet, Assistant Ranking Minority Member; Alexander and Condotta.

Referred to Committee on Capital Budget.

March 24, 2011

ESSB 5740 Prime Sponsor, Committee on Human Services & Corrections: Preventing predatory guardianships of incapacitated adults. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 11.88.040 and 2008 c 6 s 803 are each amended to read as follows:

(1) Before ~~((appointing))~~ the court appoints a guardian or a limited guardian, ~~((notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon))~~ the petitioner must send notice of a hearing by personal service in the manner provided for services of summons no less than fifteen days in advance of the hearing on the petition to the alleged incapacitated person, if over fourteen years of age, and ((served upon)) the guardian ad litem.

(2) Before ~~((appointing))~~ the court appoints a guardian or a limited guardian, the petitioner must send notice of a hearing ~~((to be held not less than ten days after service thereof, shall be given))~~ by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, no less than fifteen days in advance of the hearing on the petition to the following:

~~((1))~~ (a) The alleged incapacitated person, ~~((or minor,))~~ if under fourteen years of age;

~~((2))~~ (b) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse or domestic partner of the alleged incapacitated person if any;

~~((3))~~ (c) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in ~~((subsections (2) and (3)))~~ (a) and (b) of this subsection if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

~~((4))~~ (3) Notice of a hearing under subsection (2) of this section must include the name of the person who the court or guardian ad litem proposes to be appointed as guardian or limited guardian. If a person receiving notice of a hearing under subsection (2) of this section did not receive notice of the commencement of the guardianship proceeding under RCW 11.88.030, the notice of a hearing sent to the person must include a copy of the petition for appointment of a guardian and the statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or

incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

~~(5)~~ The alleged incapacitated person shall be present in court at the final hearing on the petition ~~((PROVIDED, That))~~. However, this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party.

Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

~~(6)~~ If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

Sec. 2. RCW 11.88.090 and 2008 c 6 s 804 are each amended to read as follows:

(1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180 shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his or her behalf.

(2) Prior to the appointment of a guardian or a limited guardian, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of the alleged incapacitated person or the guardian ad litem, or subsequent to such appointment, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of any interested person, the court may:

(a) Require any party or other person subject to the jurisdiction of the court to participate in mediation;

(b) Establish the terms of the mediation; and

(c) Allocate the cost of the mediation ~~((pursuant to RCW 11.96.140)).~~

(3) ~~(a)~~ Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to:

~~((a))~~ (i) Be free of influence from anyone interested in the result of the proceeding; and

~~((b))~~ (ii) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

~~(b)~~ The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a statement including: His or her training relating to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the guardian ad litem's statement, any party may set a hearing and file and serve a motion for an order to show cause why the guardian ad litem should not be removed for one of the following three reasons:

(i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest. Notice of the hearing shall be provided to the guardian ad litem and all parties. If, after a hearing, the court enters an order replacing the guardian ad litem, findings shall be included, expressly stating the reasons for the removal. If the guardian ad litem is not removed, the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

(c) No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(4)(a) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(b) To be eligible for the registry a person shall:

(i) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(A) Level of formal education;

(B) Training related to the guardian ad litem's duties;

(C) Number of years' experience as a guardian ad litem;

(D) Number of appointments as a guardian ad litem and the county or counties of appointment;

(E) Criminal history, as defined in RCW 9.94A.030; and

(F) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters 11.88 and 11.92 RCW.

The written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(ii) Complete the training as described in (e) of this subsection.

The training is not applicable to guardians ad litem appointed pursuant to special proceeding Rule 98.16W.

(c) Superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(d) The background and qualification information shall be updated annually.

(e) The department of social and health services shall convene an advisory group to develop a model guardian ad litem training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

(f) The superior court shall require utilization of the model program developed by the advisory group as described in (e) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section ~~((shall have))~~ has the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(f) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(ix) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least fifteen days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her counsel, spouse or domestic partner, all children not residing with a notified person, those persons described in (f)(viii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150. If the guardian ad litem needs additional time to finalize his or her report, then the guardian ad litem shall petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction of time for filing the report. If the hearing does not occur within sixty days of filing the petition, then upon the two-month anniversary of filing the petition and on or before the same day of each following month until the hearing, the guardian ad litem shall file interim reports summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred;

(g) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel;

(h) To disclose in writing to the court any prior relationship or circumstance for the period covering ten years prior to the guardian ad litem's appointment or any existing relationship or circumstance that causes the appearance of a conflict of interest with respect to the guardian ad litem's recommendation of the appointment of a particular person or persons as a guardian or limited guardian of the alleged incapacitated person. Such disclosure must also be provided to persons receiving copies of the report as required in (f)(viii) of this subsection (5).

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to subsection (5)(f) of this section.

(7) The parties to the proceeding may file responses to the guardian ad litem report with the court and deliver such responses to the other parties and the guardian ad litem at any time up to the second day prior to the hearing. If a guardian ad litem fails to file his or her report in a timely manner, the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report. At any time during the proceeding upon motion of any party or on the court's own motion, the court may remove the guardian ad litem for failure to perform his or her duties as specified in this chapter, provided that the guardian ad litem shall have five days' notice of any motion to remove before the court enters such

order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out his or her duties.

(8) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person.

(9) The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

(10) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(11) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

(12) The guardian ad litem shall appear in person at all hearings on the petition unless all parties provide a written waiver of the requirement to appear.

(13) At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty.

**Sec. 3.** RCW 11.92.040 and 1991 c 289 s 10 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court or send quarterly accounts under subsection (4) of this section if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) To send on or before the last day of January, April, July, and October by certified first-class mail to the persons who are receiving special notice of proceedings under RCW 11.92.150 an updated written verified account of the administration containing the information specified in subsection (2)(a) through (e) of this section unless the total net fair market value of the guardianship estate is less than two hundred thousand dollars. A guardian or limited guardian is not required to send accounts under this subsection to a person receiving special notice of proceedings if the person files with the court and sends to the guardian or limited guardian a request not to receive quarterly accounts. The court may waive the requirement for a guardian or limited guardian to send accounts under this subsection;

(5) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

~~((5))~~ (6) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

~~((6))~~ (7) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

NEW SECTION. **Sec. 4.** A new section is added to chapter 11.88 RCW to read as follows:

The administrator for the courts must publish or cause to be published on a web site information regarding professional and lay guardians, including descriptions of the following:

(1) The different types of guardianships available under this chapter and chapter 11.92 RCW;

(2) The duties and responsibilities of guardians and limited guardians appointed by the court;

(3) The court approval process for a guardian or limited guardian to receive reimbursement for expenses and other costs from an incapacitated person's estate; and

(4) The certified professional guardian board and office of public guardianship.

NEW SECTION. **Sec. 5.** A new section is added to chapter 11.92 RCW to read as follows:

The court shall remove a guardian or limited guardian and appoint a successor guardian or limited guardian if the court finds that the guardian or limited guardian filed with the court or sent to the parties to the proceeding any report, account, or other document that the guardian or limited guardian intentionally falsified.

**Sec. 6.** RCW 43.190.060 and 1999 c 133 s 1 are each amended to read as follows:

(1) A long-term care ombudsman ~~((shall))~~ must:

~~((1))~~ (a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to administrative action, inaction, or decisions which may adversely affect the health, safety, welfare, and rights of these individuals;

~~((2))~~ (b) Monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies with respect to long-term care facilities in this state;

~~((3))~~ (c) Provide information as appropriate to residents, resident representatives, and others regarding the rights of residents, and to public agencies regarding the problems of individuals residing in long-term care facilities; and

~~((4))~~ (d) Provide for training volunteers and promoting the development of citizen organizations to participate in the ombudsman program. A trained volunteer long-term care ombudsman, in accordance with the policies and procedures established by the state long-term care ombudsman program, shall inform residents, their representatives, and others about the rights of residents, and may identify, investigate, and resolve complaints made by or on behalf of

residents of long-term care facilities relating to action, inaction, or decisions, that may adversely affect the health, safety, welfare, and rights of these individuals.

(2) Publish on a web site, or otherwise make available to residents, families of residents, and the public information regarding professional and lay guardians, including descriptions of the following:

(a) The different types of guardianships available under chapters 11.88 and 11.92 RCW;

(b) The duties and responsibilities of guardians and limited guardians appointed by the court;

(c) The court approval process for a guardian or limited guardian to receive reimbursement for expenses and other costs from an incapacitated person's estate; and

(d) The certified professional guardian board and office of public guardianship.

(3) Nothing in (~~chapter 133, Laws of 1999 shall~~) this section or RCW 43.190.065 may be construed to empower the state long-term care ombudsman or any local long-term care ombudsman with statutory or regulatory licensing or sanctioning authority."

Correct the title.

Signed by Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler; Eddy; Frockt; Kirby; Klippert; Nealey; Orwall; Rivers and Roberts.

Passed to Committee on Rules for second reading.

March 25, 2011

SSB 5749 Prime Sponsor, Committee on Higher Education & Workforce Development: Regarding the Washington advanced college tuition payment (GET) program. Reported by Committee on Higher Education

MAJORITY recommendation: Do pass. Signed by Representatives Seaquist, Chair; Carlyle, Vice Chair; Haler, Ranking Minority Member; Hasegawa; Probst; Reykdal; Sells and Springer.

MINORITY recommendation: Do not pass. Signed by Representatives Parker, Assistant Ranking Minority Member; Buys; Fagan; Warnick and Zeiger.

Referred to Committee on Ways & Means.

March 24, 2011

ESB 5764 Prime Sponsor, Senator Kastama: Creating innovate Washington. (REVISED FOR ENGROSSED: Creating innovate Washington, which includes the Washington clean energy partnership as a programmatic activity. ) Reported by Committee on Higher Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** (1) Innovate Washington is hereby created as a state agency exercising public and essential governmental functions. Innovate Washington is created as the successor to the Washington technology center and the Spokane intercollegiate research and technology institute. Innovate Washington is created to be a collaborative effort between the state's public and private institutions of higher education, private industry, and government and

is to be the primary agency focused on growing the innovation-based economic sectors of the state and responding to the technology transfer needs of existing businesses in the state.

(2) The mission of innovate Washington is to make Washington the best place to develop, build, and deploy innovative products, services, and solutions to serve the world. To carry out this mission, innovate Washington is to: Develop and strengthen academic-industry relationships through research and assistance that is primarily of interest to existing small and medium-sized Washington-based companies; facilitate company growth through early stage financing; and leverage state investments in sector-focused, innovation-based economic development initiatives consistent with the state's economic development strategic plan. As funds are available, innovate Washington shall:

(a) Facilitate leading edge collaborative research and technology transfer opportunities to existing state businesses directly and by working with industry associations and innovation partnership zones;

(b) Coordinate its activities with the commercialization and technology transfer activities of the state's research institutions to facilitate research that supports and develops state industries;

(c) Provide methods, systems, and venues for effective interaction and collaboration between the state's technology-based industries and its institutions of higher education;

(d) Provide assistance and support to businesses in:

(i) Securing federal and private funds to support product research and commercialization;

(ii) Developing and integrating technology in new or enhanced products and services; and

(iii) Launching those products and services in sustainable businesses in the state;

(e) Establish programmatic activities that, through partnerships with the private sector, increase the competitiveness of state industries. This may include support provided to firms in innovation partnership zones established under RCW 43.330.270;

(f) Provide opportunities for training undergraduate and graduate students in technology transfer and commercialization processes through direct involvement in research and industry interactions;

(g) Administer technology and innovation grant and loan programs including bridge funding programs for the state's technology sector;

(h) Emphasize and develop nonstate support of program activities; and

(i) Facilitate public-private partnerships that support the growth of strategic, innovation-based sectors.

(3)(a) Administrative responsibilities for the Washington technology center facilities located on the University of Washington Seattle campus and the Spokane intercollegiate research and technology institute facilities located on the Riverpoint campus operated by Washington State University Spokane are hereby transferred to innovate Washington. The facilities shall be used for purposes consistent with the obligations of innovate Washington under this chapter. As initially established, the University of Washington and Washington State University shall continue to provide the facility support and maintenance for these facilities as required by innovate Washington; however, other institutions of higher education may provide facility support and maintenance subsequently.

(b) The University of Washington, Washington State University, and other institutions of higher education participating in innovate Washington programs shall provide the affiliated staff and faculty participating in these programs at their own expense.

(4) The facilities of innovate Washington may be made available to any research institution within the state when this would benefit specific program needs consistent with this chapter.

(5) Innovate Washington shall, by December 1, 2012, develop a five-year business plan that must be updated by December 1st of

every even-numbered year and submitted to the appropriate committees of the legislature. The plan must include:

- (a) A plan for operating additional facilities in Vancouver, the Tri-Cities, Bellingham, and such other locations as the innovate Washington board identifies as appropriate;
  - (b) Identification and specification of activities to be undertaken by those operating each of innovate Washington's facilities to include potential collaboration with innovative programs at the state's community and technical colleges and methods of working with the centers of excellence established under RCW 28B.50.902 to identify businesses that could benefit from innovate Washington services;
  - (c) The process to be followed, developed in collaboration with impact Washington or any successor manufacturing extension partnership program operating in the state, to ensure that impact Washington clients have ready access to innovate Washington's services when appropriate and that companies being assisted by innovate Washington have ready access to impact Washington's services; and
  - (d) Mechanisms for outreach to firms operating in the state's innovation partnership zones established under RCW 43.330.270 to ensure such firms benefit from innovate Washington services.
- NEW SECTION. Sec. 2.** (1) The powers of innovate Washington are vested in and shall be exercised by a board of directors consisting of:
- (a) The governor of the state of Washington or the governor's designee;
  - (b) The chairs of the committees in the senate and the house of representatives responsible for economic development issues or their designees;
  - (c) The president of the University of Washington or the president's designee;
  - (d) The president of Washington State University or the president's designee;
  - (e) The director of the department of commerce or the director's designee;
  - (f) The chairs of the sector advisory committees created under this chapter shall serve as ex officio voting members; and
  - (g) Seven members appointed by the governor from among individuals who own or are executives at technology-based and innovative firms in the state. The term of office for each board member appointed by the governor shall be three years except, of the initial appointees, three shall be appointed for one year and three shall be appointed for two years. Members of the board may be appointed for additional terms.
- (2) The board shall meet at least biannually. The initial meeting of the board must occur before December 31, 2011.
- (3) A board member may be removed by the governor for cause under RCW 43.06.070 and 43.06.080. The governor must fill any vacancy on the board by appointment for the remainder of the unexpired term.
- (4)(a) The appointed members of the board shall be compensated in accordance with RCW 43.03.240 and may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 43.03.050 and 43.03.060.
- (b) The ex officio members of the board under subsection (1)(a) and (c) through (g) of this section may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 43.03.050 and 43.03.060.
- (c) Legislative members of the board may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 44.04.120.
- (5) A majority of currently serving board members constitutes a quorum.
- (6) Meetings of the board shall be held in accordance with the open public meetings act, chapter 42.30 RCW, and at the call of the chair or when a majority of the board members so requests. Meetings

of the board may be held at any location within or out of the state, and board members may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200.

- (7) The innovate Washington board must:
  - (a) Develop operating policies for innovate Washington programs;
  - (b) Appoint, and perform an annual performance review of, an executive director;
  - (c) Approve an annual operating budget and ensure adequate funding for operations;
  - (d) Approve a five-year business plan and its updates;
  - (e) Perform the duties required under chapter 70.210 RCW relating to the investing in innovation program;
  - (f) Convene representatives of the commercialization and technology transfer offices of private and public research institutions in the state to determine the best methods for:
    - (i) Integrating existing databases into a single database of in-state technologies and inventions;
    - (ii) Making the technologies in the integrated database accessible; and
    - (iii) Promoting the integrated database to entrepreneurs and investors for commercialization and licensing purposes;
  - (g) Set performance goals for each program or service established; and
  - (h) Provide a report to the governor and the legislature detailing the fund-raising activities and outcomes, operations, economic impact, and performance of innovate Washington. The report is due by December 1st of every year and the first report is due by December 1, 2012. The report must include measures related to customer satisfaction as well as measures of results derived from assistance provided to businesses, including but not limited to job creation inside and outside of Washington, new product development, new markets opened and other export measures, the adoption of new production processes, revenue and sales growth, measures that would be included in a balanced scorecard, and such other outcome-based measures as the board determines is appropriate.
- (8) The board may:
  - (a) Make and execute agreements, contracts, and other instruments with any private, public, or nonprofit entity for the performance, operation, administration, implementation, or advancement of any program in accordance with this chapter;
  - (b) Employ, contract with, or engage staff, advisors, auditors, other technical or professional assistants, and such other personnel as are necessary or desirable to implement this chapter. Staff support for innovate Washington programs may be provided through cooperative agreements with any public or private institution of higher education;
  - (c) Solicit and receive gifts, grants, donations, sponsorships, or contributions from any federal, state, or local governmental agency or program or any private source, and expend the same for any purpose consistent with this chapter;
  - (d) Establish such:
    - (i) Affiliated organizations, that may not be considered state agencies as defined under chapter 43.88 RCW, to facilitate partnerships and program delivery with the private sector;
    - (ii) Special funds consistent with the provisions of chapter 43.88 RCW; and
    - (iii) Controls as it finds convenient for the implementation of this chapter;
  - (e) Create one or more advisory committees;
  - (f) Adopt rules consistent with this chapter;
  - (g) Delegate any of its powers and duties if consistent with the purposes of this chapter; and
  - (h) Exercise any other power reasonably required to implement the purposes of this chapter.

**NEW SECTION. Sec. 3.** (1) To increase participation by Washington state small business innovators in federal small business research programs, innovate Washington shall provide or contract for the provision of a small business innovation assistance program. The program must include a proposal review process and must train and assist Washington small business innovators to win awards from federal small business research programs. The program must collaborate with small business development centers, entrepreneur-in-residence programs, and other appropriate sources of technical assistance to ensure that small business innovators also receive the planning, counseling, and support services necessary to expand their businesses and protect their intellectual property.

(2) In operating the program, innovate Washington must give priority to first-time applicants to the federal small business research programs, new businesses, and firms with fewer than ten employees, and may charge a fee for its services.

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

(a) "Federal small business research programs" means the programs, operating pursuant to the small business innovation development act of 1982, P.L. 97-219, and the small business technology transfer act of 1992, P.L. 102-564, title II, that provide funds to small businesses to conduct research having commercial application.

(b) "Small business" means a corporation, partnership, sole proprietorship, or individual, operating a business for profit, with two hundred fifty employees or fewer, including employees employed in a subsidiary or affiliated corporation, that otherwise meets the requirements of federal small business research programs.

**NEW SECTION. Sec. 4.** The investing in innovation account is created in the custody of the state treasurer to receive state and federal funds, grants, private gifts, or contributions to further the purpose of innovate Washington. Expenditures from the account may be used only for the purposes of the investing in innovation programs established in chapter 70.210 RCW and any other purpose consistent with this chapter. Only the executive director of innovate Washington or the executive director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**NEW SECTION. Sec. 5.** The Washington clean energy partnership is created as a programmatic activity of innovate Washington. The partnership shall develop, implement, and manage programs and funding initiatives related to expanding the clean energy sector in Washington. The partnership shall coordinate clean energy initiatives and implement the clean energy leadership council's recommendations provided in the Washington state clean energy leadership plan report.

**NEW SECTION. Sec. 6.** (1) The Washington clean energy partnership shall, as funds are available:

(a) Implement the strategy and recommendations of the clean energy leadership council including implementing the first three market-driving initiatives identified by the council in its 2010 report:

- (i) Combined energy efficiency, green buildings, and smart grid;
- (ii) Renewable energy resource optimization and smart grid deployment; and

- (iii) Bioenergy deployment acceleration;

(b) Assess periodically other potential opportunities, such as the production of thermal energy as a clean energy technology, and add market-driving initiatives if justified by comprehensive analysis;

(c) Serve as the primary point of contact and lead entity in the state for developing and coordinating clean energy-related initiatives and funding programs targeted at expanding the clean energy sector;

(d) Secure a minimum of fifty percent nonstate funds for projects undertaken by the partnership, however nonstate funds or moneys that

the partnership is directed to manage that have different matching contribution requirements are not subject to this subsection (1)(d);

(e) Use state funding to demonstrate state commitment, serve as a catalyst for attracting matching funding from multiple sources, and stimulate collaborative projects among other purposes;

(f) Work with the public and private utilities, district energy providers, and the utilities and transportation commission to develop recommendations to improve alignment of state investments, policies, and the work of the partnership, with the operations of utilities, including investor-owned utilities regulated by the utilities and transportation commission, however, this subsection does not create a right in any person to challenge a regulatory decision of the utilities and transportation commission;

(g) Work with the legislature to establish a long-term, stable funding strategy appropriate for supporting the partnership;

(h) Track, identify, and create opportunities to attract federal and other nonstate funding, and make recommendations for increasing Washington's success rate in receiving federal and other nonstate funds;

(i) Work with regional public and private utilities to identify a process for understanding and prioritizing their goals and make recommendations for aligning, coordinating, and leveraging the partnership's investments with the needs of regional utilities in ways that help accelerate the growth of clean energy jobs and technology in the region;

(j) Participate fully in federal and other governmental programs and take such actions as are necessary and consistent with this chapter to secure for the partnership and the people of the state the benefits of those programs and to meet their requirements; and

(k) Conduct analyses as necessary to identify and communicate to policymakers the best opportunities for Washington to maintain and expand the clean energy sector in Washington state.

(2) Existing energy policy and regulatory functions of the department of commerce shall remain with the state energy office.

(3) By November 1, 2012, and November 1st biennially thereafter, innovate Washington must submit a report to the legislature and the governor with recommendations on ways to improve policy alignment, streamline regulatory requirements, and remove administrative barriers that limit the growth of the clean energy sector in Washington as well as a discussion of best practices encountered in implementing the market-driving initiatives.

**NEW SECTION. Sec. 7.** The clean energy sector advisory committee is created. The executive director of innovate Washington shall appoint up to twenty members, the majority of which must consist of representatives from companies or organizations that are directly involved with developing, deploying, or operating clean energy solutions. The committee shall select one member to serve as its chair, and who shall also serve in an ex officio capacity on the board of innovate Washington. Duties of the committee include:

- (1) Approving the appointment of the director of the partnership;

- (2) Approving the annual operating budget of the partnership;

- (3) Providing strategic guidance to the director on the needs of the clean energy sector; and

- (4) Establishing priorities for the use of partnership funds, including approving the allocation of funds to projects.

**NEW SECTION. Sec. 8.** The Washington clean energy partnership fund is created in the custody of the state treasurer to receive state and federal funds, grants, private gifts, or contributions to further the purpose of the Washington clean energy partnership. Only the executive director of innovate Washington or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec. 9.** RCW 43.325.040 and 2009 c 564 s 942 and 2009 c 451 s 5 are each reenacted and amended to read as follows:

(1) The energy freedom account is created in the state treasury. All receipts from appropriations made to the account and any loan payments of principal and interest derived from loans made under the energy freedom account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for financial assistance for further funding for projects consistent with this chapter or otherwise authorized by the legislature.

(2) The green energy incentive account is created in the state treasury as a subaccount of the energy freedom account. All receipts from appropriations made to the green energy incentive account shall be deposited into the account, and may be spent only after appropriation. Expenditures from the account may be used only for:

(a) Refueling projects awarded under this chapter;

(b) Pilot projects for plug-in hybrids, including grants provided for the electrification program set forth in RCW 43.325.110; and

(c) Demonstration projects developed with state universities as defined in RCW 28B.10.016 and local governments that result in the design and building of a hydrogen vehicle fueling station.

(3)(a) The energy recovery act account is created in the state treasury. State and federal funds may be deposited into the account and any loan payments of principal and interest derived from loans made from the energy recovery act account must be deposited into the account. Moneys in the account may be spent only after appropriation.

(b) Expenditures from the account may be used only for loans, loan guarantees, and grants that encourage the establishment of innovative and sustainable industries for renewable energy and energy efficiency technology, including but not limited to:

(i) Renewable energy projects or programs that require interim financing to complete project development and implementation;

(ii) Companies with innovative, near-commercial or commercial, clean energy technology; ~~and~~

(iii) Energy efficiency technologies that have a viable repayment stream from reduced utility costs; and

(iv) Initiatives approved by the Washington clean energy partnership.

~~((e))~~ (4)(a) The director shall establish policies and procedures for processing, reviewing, and approving applications for funding under this section. ~~((When developing these))~~ The policies and procedures~~(, the department must consider the clean energy leadership strategy developed under section 2, chapter 318, Laws of 2009))~~ developed under this section must be approved by the Washington clean energy partnership.

~~((d))~~ (b) The director shall enter into agreements with approved applicants to fix the term and rates of funding provided from this account.

~~((e))~~ (c) The policies and procedures of this subsection ~~((e))~~ (4) do not apply to assistance awarded for projects under RCW 43.325.020(3).

~~((f))~~ (5) Any state agency receiving funding from the energy freedom account is prohibited from retaining greater than three percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce unless this provision is waived in writing by the director.

~~((g))~~ (6) Any university, institute, or other entity that is not a state agency receiving funding from the energy freedom account is prohibited from retaining greater than fifteen percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce.

~~((h))~~ Subsections (2), (4) and (5) of this section do not apply to assistance awarded for projects under RCW 43.325.020(3).

(7) During the 2009-2011 fiscal biennium, the legislature may transfer from the energy freedom account to the state general fund such amounts as reflect the excess fund balance of the account.))

NEW SECTION. Sec. 10. A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions in RCW 41.06.070, this chapter does not apply to any position in or employee of innovate Washington under chapter 43.--- RCW (the new chapter created in section 24 of this act).

Sec. 11. RCW 28B.50.902 and 2009 c 151 s 4 are each amended to read as follows:

(1) The college board, in consultation with business, industry, labor, the workforce training and education coordinating board, the department of ~~((community, trade, and economic development))~~ commerce, the employment security department, and community and technical colleges, shall designate centers of excellence and allocate funds to existing and new centers of excellence based on a competitive basis.

(2) Eligible applicants for the program established under this section include community and technical colleges. Priority shall be given to applicants that have an established education and training program serving the targeted industry and that have in their home district or region an industry cluster with the same targeted industry at its core.

(3) It is the role of centers of excellence to employ strategies to:

(a) Create educational efficiencies;

(b) Build a diverse, competitive workforce for strategic industries;

(c) Maintain an institutional reputation for innovation and responsiveness;

(d) Develop innovative curriculum and means of delivering education and training;

(e) Act as brokers of information and resources related to community and technical college education and training ~~((for))~~ and assistance available for firms in a targeted industry, including working with innovate Washington to develop methods to identify businesses within a targeted industry that could benefit from the services offered by innovate Washington under chapter 43.--- RCW (the new chapter created in section 24 of this act); and

(f) Serve as partners with workforce development councils, associate development organizations, and other workforce and economic development organizations.

(4) Examples of strategies under subsection (3) of this section include but are not limited to: Sharing curriculum and other instructional resources, to ensure cost savings to the system; delivering collaborative certificate and degree programs; and holding statewide summits, seminars, conferences, and workshops on industry trends and best practices in community and technical college education and training.

Sec. 12. RCW 70.210.010 and 2003 c 403 s 1 are each amended to read as follows:

It is the intent of the legislature to promote growth in the technology sectors of our state's economy and to particularly focus support on the ~~((creation and))~~ commercialization of intellectual property ~~((in the technology, energy, and telecommunications industries))~~ and the manufacture of innovative products in the state.

Sec. 13. RCW 70.210.020 and 2003 c 403 s 2 are each amended to read as follows:

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

(1) ("Center" means the Washington technology center established under RCW 28B.20.283 through 28B.20.295.

(2)) "Board" means the innovate Washington board of directors ~~((for the center)).~~

(3) "Innovate Washington" means the agency created in section 1 of this act.

Sec. 14. RCW 70.210.030 and 2003 c 403 s 4 are each amended to read as follows:



(1) The investing in innovation (~~((grants))~~) program is established.

(2) (~~(The center))~~ Innovate Washington shall periodically make strategic assessments of the types of (~~(state))~~ investments in research (~~(and))~~, technology, and industrial development in this state that would likely create new products, jobs, and business opportunities and produce the most beneficial long-term improvements to the lives and health of the citizens of the state. The assessments shall be available to the public and shall be used to guide decisions on awarding (~~(grants))~~ funds under this chapter.

**Sec. 15.** RCW 70.210.040 and 2003 c 403 s 5 are each amended to read as follows:

The board shall:

(1) Develop criteria for the awarding of loans or grants to qualifying universities, institutions, businesses, or individuals;

(2) Make decisions regarding distribution of (~~(grant))~~ funds (~~(and make grant awards))~~; (~~(and))~~

(3) In making (~~(grant awards, seek to provide a balance between research grant awards and commercialization grant awards))~~ funding decisions and to the extent that economic impact is not diminished, provide priority to enterprises that:

(a) Were created through, and have existing intellectual property agreements in place with, public and private research institutions in the state; and

(b) Intend to produce new products or services, develop or expand facilities, or manufacture in the state; and

(4) Specify in contracts awarding funds that recipients must utilize funding received to support operations in the state of Washington and must subsequently report on the impact of their research, development, and any subsequent production activities within Washington for a period of ten years following the award of funds, and that a failure to comply with this requirement will obligate the recipient to return the amount of the award plus interest as determined by the board.

**Sec. 16.** RCW 70.210.050 and 2003 c 403 s 6 are each amended to read as follows:

(1) The board may accept grant and loan proposals and establish a competitive process for the awarding of grants and loans.

(2) The board shall establish a peer review committee to include board members, scientists, engineers, and individuals with specific recognized expertise. The peer review committee shall provide to the board an independent peer review of all proposals determined to be competitive for a loan or grant award that are submitted to the board.

(3) In the awarding of grants and loans, priority shall be given to proposals that leverage additional private and public funding resources.

(4) (Up to fifty percent of available funds from the investing in innovation account may be used to support commercialization opportunities for research in Washington state through an organization with commercialization expertise such as the Spokane intercollegiate research and technology institute.

(5) The center)) Innovate Washington may not be a direct recipient of (~~(grant awards))~~ funding under this chapter ((403, Laws of 2003))

**Sec. 17.** RCW 70.210.060 and 2003 c 403 s 7 are each amended to read as follows:

The board shall establish performance benchmarks against which the program will be evaluated. The (~~(grants))~~ program shall be reviewed periodically by the board. The board shall report annually to the appropriate standing committees of the legislature on loans made and grants awarded and as appropriate on program reviews conducted by the board.

**Sec. 18.** RCW 70.210.070 and 2003 c 403 s 8 are each amended to read as follows:

(1) (~~(The center))~~ Innovate Washington shall administer the investing in innovation (~~((grants))~~) program.

(2) Not more than one percent of the available funds from the investing in innovation account may be used for administrative costs of the program.

**Sec. 19.** RCW 42.30.110 and 2010 1st sp.s. c 33 s 5 are each amended to read as follows:

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive

economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential unpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To consider in the case of innovate Washington, the substance of grant or loan applications and grant or loan awards if public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

**Sec. 20.** RCW 42.56.270 and 2009 c 394 s 3 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of ~~((community, trade, and economic development))~~ commerce:

(i) Financial and proprietary information collected from any person and provided to the department of ~~((community, trade, and economic development))~~ commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of ~~((community, trade, and economic development))~~ commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of ~~((community, trade, and economic development))~~ commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of ~~((community, trade, and economic development))~~ commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business; ~~(and)~~

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information; and

(21) Financial, commercial, operations, and technical and research information and data submitted to or obtained by innovate Washington in applications for, or delivery of, grants and loans under chapter 43,--- RCW (the new chapter created in section 24 of this act), to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.

**NEW SECTION. Sec. 21.** The following acts or parts of acts are each repealed:

(1) RCW 28B.20.283 (Washington technology center--Findings) and 1995 c 399 s 25 & 1992 c 142 s 1;

(2) RCW 28B.20.285 (Washington technology center--Created--Purpose) and 2004 c 151 s 3, 2003 c 403 s 10, 1992 c 142 s 3, & 1983 1st ex.s. c 72 s 11;

(3) RCW 28B.20.287 (Washington technology center--Definitions) and 2004 c 151 s 4 & 1992 c 142 s 2;

(4) RCW 28B.20.289 (Washington technology center--Administration--Board of directors) and 2003 c 403 s 11, 1995 c 399 s 26, & 1992 c 142 s 4;

(5) RCW 28B.20.291 (Washington technology center--Support from participating institutions) and 1992 c 142 s 5;

(6) RCW 28B.20.293 (Washington technology center--Role of department of community, trade, and economic development) and 1995 c 399 s 27 & 1992 c 142 s 6;

(7) RCW 28B.20.295 (Washington technology center--Availability of facilities to other institutions) and 1992 c 142 s 7;

(8) RCW 28B.20.296 (Washington technology center--Renewable energy and energy efficiency business development--Strategic plan) and 2004 c 151 s 2;

(9) RCW 28B.20.297 (Washington technology center--Small business innovation research assistance program) and 2005 c 357 s 1;

(10) RCW 28B.38.010 (Spokane intercollegiate research and technology institute) and 2004 c 275 s 55 & 1998 c 344 s 9;

(11) RCW 28B.38.020 (Administration--Board of directors--Powers and duties) and 1998 c 344 s 10;

(12) RCW 28B.38.030 (Support from participating institutions) and 1998 c 344 s 11;

(13) RCW 28B.38.040 (Operating staff--Cooperative agreements for programs and research) and 1998 c 344 s 12;

(14) RCW 28B.38.050 (Role of department of community, trade, and economic development) and 1998 c 344 s 13;

(15) RCW 28B.38.060 (Availability of facilities to other institutions) and 1998 c 344 s 14;

(16) RCW 28B.38.070 (Authority to receive and expend funds) and 1998 c 344 s 15; and

(17) RCW 28B.38.900 (Captions not law) and 1998 c 344 s 16.

**NEW SECTION. Sec. 22.** (1) The Spokane intercollegiate research and technology institute and the Washington technology center are hereby abolished and the powers, duties, and functions are hereby transferred to innovate Washington. Once the board created in section 2 of this act has convened, all references to the Spokane intercollegiate research and technology institute or the Washington technology center in the Revised Code of Washington shall be construed to mean innovate Washington.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the Spokane intercollegiate research and technology institute or the Washington technology center shall be delivered to the custody of innovate Washington. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the Spokane intercollegiate research and technology institute or the Washington technology center shall be made available to innovate Washington. All funds, credits, or other assets held by the Spokane intercollegiate research and technology institute or the Washington technology center shall be assigned to innovate Washington.

(b) Any appropriations made to the Spokane intercollegiate research and technology institute or the Washington technology center shall, on the effective date of this section, be transferred and credited to innovate Washington.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the Spokane intercollegiate research and technology institute or the Washington technology center are transferred to the jurisdiction of innovate Washington. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to innovate Washington to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the Spokane intercollegiate research and technology institute or the Washington technology center shall be continued and acted upon by innovate Washington. All existing contracts and obligations shall remain in full force and shall be performed by innovate Washington.

(5) The transfer of the powers, duties, functions, and personnel of the Spokane intercollegiate research and technology institute and the Washington technology center shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the Spokane intercollegiate research and technology institute or the Washington technology center assigned to innovate Washington under this section whose positions are within an existing bargaining unit description at innovate Washington shall become a part of the existing bargaining unit at innovate Washington and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW.

**NEW SECTION. Sec. 23.** RCW 70.210.070 is recodified as a section in chapter 43,--- RCW (the new chapter created in section 24 of this act).

**NEW SECTION. Sec. 24.** Sections 1 through 4 and 18 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 25. Section 9 of this act expires June 30, 2016.

NEW SECTION. Sec. 26. This act takes effect August 1, 2011."  
Correct the title.

Signed by Representatives Seaquist, Chair; Carlyle, Vice Chair; Haler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Fagan; Probst; Reykdal; Sells; Springer; Warnick and Zeiger.

MINORITY recommendation: Do not pass. Signed by Representatives Buys and Hasegawa.

Referred to Committee on Ways & Means.

March 22, 2011

E2SSB 5769 Prime Sponsor, Committee on Ways & Means:  
Regarding coal-fired electric generation facilities.  
Reported by Committee on Environment

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 101. (1) The legislature finds that generating electricity from the combustion of coal produces pollutants that are harmful to human health and safety and the environment. While the emission of many of these pollutants continues to be addressed through application of federal and state air quality laws, the emission of greenhouse gases resulting from the combustion of coal has not been addressed.

(2) The legislature finds that coal-fired electricity generation is one of the largest sources of greenhouse gas emissions in the state, and is the largest source of such emissions from the generation of electricity in the state.

(3) The legislature finds coal-fired electric generation may provide baseload power that is necessary in the near-term for the stability and reliability of the electrical transmission grid and that contributes to the availability of affordable power in the state. The legislature further finds that efforts to transition power to other fuels requires a reasonable period of time to ensure grid stability and to maintain affordable electricity resources.

(4) The legislature finds that coal-fired baseload electric generation facilities are a significant contributor to family-wage jobs and economic health in parts of the state and that transition of these facilities must address the economic future and the preservation of jobs in affected communities.

(5) Therefore, it is the purpose of this act to provide for the reduction of greenhouse gas emissions from large coal-fired baseload electric power generation facilities, to effect an orderly transition to cleaner fuels in a manner that ensures reliability of the state's electrical grid, to ensure appropriate cleanup and site restoration upon decommissioning of any of these facilities in the state, and to provide assistance to host communities planning for new economic development and mitigating the economic impacts of the closure of these facilities.

**Sec. 102.** RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are each reenacted and amended to read as follows:

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gas emissions output" means the level of greenhouse gas emissions as surveyed and determined by the energy policy division of the department of commerce under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

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

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse ((gases)) gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by a jurisdiction inside or outside the state.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

(19) "Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the

standards contained in RCW 80.80.040(3)(c).

(20) "Memorandum of agreement" or "memorandum" means a binding and enforceable contract entered into pursuant to section 106 of this act between the governor on behalf of the state and an owner of a baseload electric generation facility in the state that produces coal transition power.

**Sec. 103.** RCW 80.80.040 and 2009 c 448 s 2 are each amended to read as follows:

(1) Beginning July 1, 2008, the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(2) This chapter does not apply to long-term financial commitments with the Bonneville power administration.

(3)(a) Except as provided in (c) of this subsection, all baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of long-term financial commitments.

(b) All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gas emissions performance standard established in subsection (1) of this section.

(c)(i) A coal-fired baseload electric generation facility in Washington that emitted more than one million tons of greenhouse gases in calendar year 2005 must comply with the lower of the following greenhouse gas emissions performance standard such that one generating boiler is in compliance by December 31, 2020, and any other generating boiler is in compliance by December 31, 2025:

(A) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(B) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(ii) This subsection (3)(c) does not apply to a coal-fired baseload electric generating facility in the event the department determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(4) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section.

(5) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(6) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(7) In no case shall a long-term financial commitment be determined to be in compliance with the greenhouse gas emissions performance standard if the commitment includes more than twelve percent of electricity from unspecified sources.

(8) For a long-term financial commitment with multiple power plants, each specified power plant must be treated individually for the purpose of determining the annualized plant capacity factor and net emissions, and each power plant must comply with subsection (1) of this section, except as provided in subsections (3) through (5) of this section.

(9) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a

cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gas emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(10) The following greenhouse gas emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gas emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (16) of this section.

(11) In adopting and implementing the greenhouse gas emissions performance standard, the department of (~~community, trade, and economic development~~) commerce energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity (~~coordination~~ coordinating) coordinating council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gas emissions performance standard on system reliability and overall costs to electricity customers.

(12) In developing and implementing the greenhouse gas emissions performance standard, the department shall, with assistance of the commission, the department of (~~community, trade, and economic development~~) commerce energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(13) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gas emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(14) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (10) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (16) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(15)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gas emissions performance standard,

the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(16) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (14) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gas emissions performance standard by purchasing verifiable greenhouse gas emissions reductions from an electric (~~(generating)~~) generation facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility.

**Sec. 104.** RCW 80.80.060 and 2009 c 448 s 3 and 2009 c 147 s 1 are each reenacted and amended to read as follows:

(1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse (~~(gases +gas))~~ gas emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse (~~(gases +gas))~~ gas emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse (~~(gases +gas))~~ gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; (b) extraordinary cost impacts on utility ratepayers; or (c) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse (~~(gases +gas))~~ gas emissions

performance standard established under RCW 80.80.040. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs. For the purpose of this subsection (6) only, the term "long-term financial commitment" also includes an electric company's ownership or power purchase agreement with a term of five or more years associated with an eligible renewable resource as defined in RCW 19.285.030.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse (~~(gases +gas))~~ gas emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) This section does not apply to a long-term financial commitment for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

(10) The commission shall adopt rules necessary to implement this section by December 31, 2008.

**Sec. 105.** RCW 80.80.070 and 2007 c 307 s 9 are each amended to read as follows:

(1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse (~~(gases))~~ gas emissions performance standard established under RCW 80.80.040.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse (~~(gases))~~ gas emissions performance standard established under RCW 80.80.040. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse (~~(gases))~~ gas emissions performance standard established under RCW 80.80.040.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary

for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse ((gases)) gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

(7) This section does not apply to long-term financial commitments for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

**NEW SECTION. Sec. 106.** A new section is added to chapter 80.80 RCW to read as follows:

(1) By January 1, 2012, the governor on behalf of the state shall enter into a memorandum of agreement that takes effect on April 1, 2012, with the owners of a coal-fired baseload facility in Washington that emitted more than one million tons of greenhouse gases in calendar year 2005. The memorandum of agreement entered into by the governor may only contain provisions authorized in this section, except as provided under section 108 of this act.

(2) The memorandum of agreement must:

(a) Incorporate by reference RCW 80.80.040, 80.80.060, and 80.80.070 as of the effective date of this section;

(b) Incorporate binding commitments to install selective noncatalytic reduction pollution control technology in any coal-fired generating boilers by January 1, 2013, after discussing the proper use of ammonia in this technology.

(3)(a) The memorandum of agreement must include provisions by which the facility owner will provide financial assistance:

(i) To the affected community for economic development and energy efficiency and weatherization; and

(ii) For energy technologies with the potential to create considerable energy, economic development, and air quality, haze, or other environmental benefits.

(b) Except as described in (c) of this subsection, the financial assistance in (a)(i) of this subsection must be in the amount of thirty million dollars and the financial assistance in (a)(ii) of this subsection must be in the amount of twenty-five million dollars, with investments beginning January 1, 2012, and consisting of equal annual investments through December 31, 2023, or until the full amount has been provided. Only funds for energy efficiency and weatherization may be spent prior to December 31, 2015.

(c) If the tax exemptions provided under RCW 82.08.811 or 82.12.811 are repealed, any remaining financial assistance required by this section is no longer required.

(4) The memorandum of agreement must:

(a) Specify that the investments in subsection (3) of this section be held in independent accounts at an appropriate financial institution; and

(b) Identify individuals to approve expenditures from the accounts. Individuals must have relevant expertise and must include members representing the Lewis county economic development council, local elected officials, employees at the facility, and the facility owner.

(5) The memorandum of agreement must include a provision that allows for the termination of the memorandum of agreement in the event the department determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(6) The memorandum of agreement must include enforcement provisions to ensure implementation of the agreement by the parties.

(7) If the memorandum of agreement is not signed by January 1, 2012, the governor must impose requirements consistent with the provisions in subsection (2)(b) of this section.

**NEW SECTION. Sec. 107.** A new section is added to chapter 80.80 RCW to read as follows:

No state agency or political subdivision of the state may adopt or impose a greenhouse gas emission performance standard, or other operating or financial requirement or limitation relating to greenhouse gas emissions, on a coal-fired electric generation facility located in Washington in operation on or before the effective date of this section or upon an electric utility's long-term purchase of coal transition power, that is inconsistent with or in addition to the provisions of RCW 80.80.040 or the memorandum of agreement entered into under section 106 of this act.

**NEW SECTION. Sec. 108.** A new section is added to chapter 80.80 RCW to read as follows:

(1) A memorandum of agreement entered into pursuant to section 106 of this act may include provisions to assist in the financing of emissions reductions that exceed those required by RCW 80.80.040(3)(c) by providing for the recognition of such reductions in applicable state policies and programs relating to greenhouse gas emissions, and by encouraging and advocating for the recognition of the reductions in all established and emerging emission reduction frameworks at the regional, national, or international level.

(2) The governor may recommend actions to the legislature to strengthen implementation of an agreement or a proposed agreement relating to recognition of investments in emissions reductions described in subsection (1) of this section.

**Sec. 109.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to read as follows:

(1)(a) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant.

(b) In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric generating facility subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(2) If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

~~((2))~~ (3)(a) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

~~((a))~~ (i) Approve the application and execute the draft certification agreement; or

~~((b))~~ (ii) Reject the application; or

~~((c))~~ (iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as

necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

~~((3))~~ (4) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

**NEW SECTION. Sec. 201.** (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under section 106 of this act, or both, must provide the department of ecology with a plan for the closure and postclosure of the facility at least twenty-four months prior to closure of the first boiler. This plan must be consistent with the rules established by the energy facility site evaluation council for site restoration and preservation applicable to facilities subject to a site certification agreement under chapter 80.50 RCW and include but not be limited to:

(a) A detailed estimate of the cost to implement the plan based on the cost of hiring a third party to conduct all activities;

(b) Demonstrating financial assurance to fund the closure and postclosure of the facility and providing methods by which this assurance may be demonstrated;

(c) Methods for estimating closure costs, including full site reclamation under all applicable federal and state clean-up standards; and

(d) A decommissioning and site restoration plan that addresses restoring physical topography, cleanup of all hazardous substances on the site, potential future uses of the site following restoration, and coordination with local and community plans for economic development in the vicinity of the site.

(2) All cost estimates in the plan must be in current dollars and may not include a net present value adjustment or offsets for salvage value of wastes or other property.

(3) Adoption of the plan and significant revisions to the plan must be approved by the department of ecology.

**NEW SECTION. Sec. 202.** (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under section 106 of this act, or both, must guarantee funds are available to perform all activities specified in the decommissioning plan developed under section 201 of this act. The amount must equal the cost estimates specified in the decommissioning plan and must be updated annually for inflation. All guarantees under this section must be assumed by any successor owner, parent company, or holding company.

(2) The guarantee required under subsection (1) of this section may be accomplished by letter of credit, surety bond, or other means acceptable to the department of ecology.

(3) The issuing institution of the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The surety company issuing a surety bond must, at a minimum, be an entity listed as an acceptable surety on federal bonds in circular 570, published by the United States department of the treasury.

(4) A qualifying facility that uses a letter of credit to satisfy the requirements of this act must also establish a standby trust fund as a means to hold any funds issued from the letter of credit. Under the terms of the letter of credit, all amounts paid pursuant to a draft from the department of ecology must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department of ecology. This standby trust fund must be approved by the department of ecology.

(5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the qualifying facility and the department of ecology of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the qualifying plant and the department of ecology have received the notice, as evidenced by certified mail return receipts or by overnight courier delivery receipts.

(6) If the qualifying facility does not establish an alternative method of guaranteeing decommissioning funds are available within ninety days after receipt by both the qualifying facility plant and the department of ecology of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department of ecology must draw on the letter of credit. The department of ecology must approve any replacement or substitute guarantee method before the expiration of the ninety-day period.

(7) If a qualifying facility elects to use a letter of credit as the sole method for guaranteeing decommissioning funds are available, the face value of the letter of credit must meet or exceed the current inflation-adjusted cost estimate. If a qualifying facility elects to use a surety bond as the sole method for guaranteeing decommissioning funds are available, the penal sum of the surety bond must meet or exceed the current inflation-adjusted cost estimate.

(8) A qualifying facility must adjust the decommissioning costs and financial guarantees annually for inflation and may use an amendment to increase the face value of a letter of credit each year to account for this inflation. A qualifying facility is not required to obtain a new letter of credit to cover annual inflation adjustments.

**NEW SECTION. Sec. 203.** Sections 201 and 202 of this act constitute a new chapter in Title 80 RCW.

**Sec. 301.** RCW 43.160.076 and 2008 c 327 s 8 are each amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance in a biennium under this chapter, the board shall approve at least seventy-five percent of the first twenty million dollars of funds available and at least fifty percent of any additional funds for financial assistance for projects in rural counties.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in rural counties are clearly insufficient to use up the allocations under subsection (1) of this section, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance to projects not located in rural counties.

(3) The board shall solicit qualifying projects to plan, design, and construct public facilities needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in calendar year 2005. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall give priority to such projects at the following funding levels:

(a) For the 2011-2013 biennium, at least two hundred fifty thousand dollars;

(b) For the 2013-2015 biennium, at least two hundred fifty thousand dollars;



- (c) For the 2015-2017 biennium, at least one million dollars;
- (d) For the 2017-2019 biennium, at least one million dollars;
- (e) For the 2019-2021 biennium, at least two million dollars; and
- (f) For the 2021-2023 biennium, at least two million dollars.

**NEW SECTION. Sec. 302.** A new section is added to chapter 43.155 RCW to read as follows:

The board shall solicit qualifying projects to plan, design, and construct public works projects needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in calendar year 2005. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall give a priority to such projects at the following funding levels:

- (1) For the 2011-2013 biennium, at least two hundred fifty thousand dollars;
- (2) For the 2013-2015 biennium, at least two hundred fifty thousand dollars;
- (3) For the 2015-2017 biennium, at least one million dollars;
- (4) For the 2017-2019 biennium, at least one million dollars;
- (5) For the 2019-2021 biennium, at least two million dollars; and
- (6) For the 2021-2023 biennium, at least two million dollars.

**NEW SECTION. Sec. 303.** A new section is added to chapter 80.04 RCW to read as follows:

The legislature finds that an electrical company's acquisition of coal transition power helps to achieve the state's greenhouse gas emission reduction goals by effecting an orderly transition to cleaner fuels and supports the state's public policy.

**NEW SECTION. Sec. 304.** A new section is added to chapter 80.04 RCW to read as follows:

(1) On the petition of an electrical company, the commission shall approve or disapprove a power purchase agreement for acquisition of coal transition power, as defined in RCW 80.80.010, and the recovery of related acquisition costs. No agreement for an electrical company's acquisition of coal transition power takes effect until it is approved by the commission.

(2) Any power purchase agreement for the acquisition of coal transition power pursuant to this section must provide for modification of the power purchase agreement to the satisfaction of the parties thereto in the event that a new or revised emission or performance standard or other new or revised operational or financial requirement or limitation directly or indirectly addressing greenhouse gas emissions is imposed by state or federal law, rules, or regulatory requirements. Such a modification to a power purchase agreement agreed to by the parties must be reviewed and considered for approval by the commission, considering the circumstances existing at the time of such a review, under procedures and standards set forth in this section. In the event the parties cannot agree to modification of the power purchase agreement, either party to the agreement has the right to terminate the agreement if it is adversely affected by this new standard, requirement, or limitation.

(3) When a petition is filed, the commission shall provide notice to the public and potentially affected parties and set the petition for hearing as an adjudicative proceeding under chapter 34.05 RCW. Any party may request that the commission expedite the hearing of that petition. The hearing of such a petition is not considered a general rate case. The electrical company must file supporting testimony and exhibits together with the power purchase agreement for coal transition power. Information provided by the facility owner to the purchasing electrical company for evaluating the costs and benefits associated with acquisition of coal transition power must be

made available to other parties to the petition under a protective order entered by the commission. An administrative law judge of the commission may enter an initial order including findings of fact and conclusions of law, as provided in RCW 80.01.060(3). The commission shall issue a final order that approves or disapproves the power purchase agreement for acquisition of coal transition power within one hundred eighty days after an electrical company files the petition.

(4) The commission must approve a power purchase agreement for acquisition of coal transition power pursuant to this section only if the commission determines that, considering the circumstances existing at the time of such a review: The terms of such an agreement provide adequate protection to ratepayers and the electrical company during the term of such an agreement or in the event of early termination; the resource is needed by the electrical company to serve its ratepayers and the resource meets the need in a cost-effective manner as determined under the lowest reasonable cost resource standards under chapter 19.280 RCW, including the cost of the power purchase agreement plus the equity component as determined in this section. As part of these determinations, the commission shall consider, among other factors, the long-term economic risks and benefits to the electrical company and its ratepayers of such a long-term purchase.

(5) If the commission has not issued a final order within one hundred eighty days from the date the petition is filed, or if the commission disapproves the petition, the power purchase agreement for acquisition of coal transition power is null and void. In the event the commission approves the agreement upon conditions other than those set forth in the petition, the electrical company has the right to reject the agreement.

(6)(a) Upon commission approval of an electrical company's power purchase agreement for acquisition of coal transition power in accordance with this section, the electrical company is allowed to earn the equity component of its authorized rate of return in the same manner as if it had purchased or built an equivalent plant and to recover the cost of the coal transition power under the power purchase agreement. Any power purchase agreement for acquisition of coal transition power that earns a return on equity may not be included in an imputed debt calculation for setting customer rates.

(b) For purposes of determining the equity value, the cost of an equivalent plant is the least cost purchased or self-built electric generation plant with equivalent capacity. In determining the least cost plant, the commission may rely on the electrical company's most recent filed integrated resource plan. The cost of an equivalent plant, in dollars per kilowatt, must be determined in the original process of commission approval for each power purchase agreement for coal transition power.

(c) The equivalent plant cost determined in the approval process must be amortized over the life of the power purchase agreement for acquisition of coal transition power to determine the recovery of the equity value.

(d) The recovery of the equity component must be determined and approved in the review process set forth in this section. The approved equity value must be in addition to the approved cost of the power purchase agreement.

(7) Authorizing recovery of costs under a power purchase agreement for acquisition of coal transition power does not prohibit the commission from authorizing recovery of an electrical company's acquisition of capacity resources for the purpose of integrating intermittent power or following load.

(8) Neither this act nor the commission's approval of a power purchase agreement for acquisition of coal transition power that includes the ability to earn the equity component of an electrical company's authorized rate of return establishes any precedent for an electrical company to receive an equity return on any other power purchase agreement or other power contract.

(9) For purposes of this section, "power purchase agreement" means a long-term financial commitment as defined in RCW 80.80.010(15)(b).

(10) This section expires December 31, 2025.

**Sec. 305.** RCW 19.280.030 and 2006 c 195 s 3 are each amended to read as follows:

Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, high efficiency cogeneration, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies including a comparison of the benefits and risks of purchasing power or building new resources;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost and risk to the utility and its ratepayers; and

(f) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; and

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not renewable resources or conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

**NEW SECTION. Sec. 306.** A new section is added to chapter 80.70 RCW to read as follows:

(1) An applicant for a natural gas-fired generation plant to be constructed in a county with a coal-fired electric generation facility subject to RCW 80.80.040(3)(c) is exempt from this chapter if the application is filed before December 31, 2025.

(2) For the purposes of this section, an applicant means the owner of a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

(3) This section expires December 31, 2025, or when the station-generating capability of all natural gas-fired generation plants approved under this section equals the station-generating capability from a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

**NEW SECTION. Sec. 307.** 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."

Correct the title.

Signed by Representatives Upthegrove, Chair; Rolfes, Vice Chair; Short, Ranking Minority Member; Fitzgibbon; Jacks, Member; Jenkins; Moscoso; Nealey; Pearson; Takko and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Harris, Assistant Ranking Minority Member; Morris and Taylor.

Referred to Committee on Capital Budget.

March 24, 2011

**SSB 5784** Prime Sponsor, Committee on Natural Resources & Marine Waters: Advancing the regional ocean partnership. Reported by Committee on Environment

MAJORITY recommendation: Do pass. Signed by Representatives Upthegrove, Chair; Rolfes, Vice Chair; Fitzgibbon; Jenkins; Morris; Moscoso; Takko and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Nealey; Pearson and Taylor.

Passed to Committee on Rules for second reading.

March 21, 2011

**SSB 5788** Prime Sponsor, Committee on Labor, Commerce & Consumer Protection: Regulating liquor by changing tied house and licensing provisions and making clarifying and technical changes to liquor laws. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass. Signed by Representatives Hunt, Chair; Appleton, Vice Chair; Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander; Condotta; Darneille; Dunshee; Hurst; McCoy and Miloscia.

Passed to Committee on Rules for second reading.

March 24, 2011

**SSB 5796** Prime Sponsor, Committee on Transportation: Modifying provisions related to public transportation system planning. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Liias,

Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Asay; Eddy; Finn; Jinkins; Johnson; Klippert; Ladenburg; Morris; Moscoso; Reykdal; Rivers; Rolfes; Ryu; Takko; Upthegrove and Zeiger.

MINORITY recommendation: Do not pass. Signed by Representatives McCune and Shea.

Passed to Committee on Rules for second reading.

March 22, 2011

SSB 5797 Prime Sponsor, Committee on Transportation: Eliminating the urban arterial trust account. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Klippert; Kristiansen; Ladenburg; McCune; Moeller; Morris; Moscoso; Overstreet; Reykdal; Rivers; Rodne; Rolfes; Ryu; Shea; Takko; Upthegrove and Zeiger.

Passed to Committee on Rules for second reading.

March 24, 2011

SSB 5800 Prime Sponsor, Committee on Transportation: Authorizing the use of modified off-road motorcycles on public roads. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel; Asay; Eddy; Finn; Fitzgibbon; Jinkins; Johnson; Klippert; Ladenburg; McCune; Morris; Moscoso; Reykdal; Rivers; Rolfes; Ryu; Shea; Takko; Upthegrove and Zeiger.

Passed to Committee on Rules for second reading.

March 24, 2011

SSJM 8004 Prime Sponsor, Committee on Natural Resources & Marine Waters: Requesting the reestablishment of the road leading to the upper Stehekin Valley within the North Cascades National Park. Reported by Committee on Environment

MAJORITY recommendation: Do pass. Signed by Representatives Upthegrove, Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Jinkins; Morris; Moscoso; Nealey; Pearson; Takko and Taylor.

MINORITY recommendation: Do not pass. Signed by Representatives Rolfes, Vice Chair; Fitzgibbon and Tharinger.

Passed to Committee on Rules for second reading.

There being no objection, the bills and memorial listed on the day's committee reports under the fifth order of business were referred to the committees so designated.

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 28, 2011, the 78th Day of the Regular Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk

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