

FIFTY NINTH DAY

MORNING SESSION

Senate Chamber, Olympia, Wednesday, March 10, 2010

The Senate was called to order at 9:30 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Fairley, Holmquist, McCaslin, Pflug and Roach.

The Sergeant at Arms Color Guard consisting of Pages Ted Hammond and Sarah Smith, presented the Colors. Pastor Mark Van Haitsma of Olympia Christian Reformed Church offered the prayer.

MOTION

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

There being no objection, the Senate advanced to the first order of business.

REPORTS OF STANDING COMMITTEES

March 9, 2010

SB 6851 Prime Sponsor, Senator Murray: Concerning the clean water act of 2010 funding cleanup of water pollution and other programs necessary for the health and well-being of Washington citizens through an increase in the tax on hazardous substances. Reported by Committee on Ways & Means

MAJORITY recommendation: That Substitute Senate Bill No. 6851 be substituted therefor, and the substitute bill do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Keiser; Kline; Kohl-Welles; McDermott; Murray; Oemig; Pridemore; Regala and Rockefeller.

MINORITY recommendation: Do not pass. Signed by Senators Carrell; Hewitt; Parlette; Pflug and Schoesler.

Passed to Committee on Rules for second reading.

March 9, 2010

SHB 2893 Prime Sponsor, Committee on Education Appropriations: Changing school levy provisions. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Hobbs; Keiser; Kline; Kohl-Welles; McDermott; Murray; Oemig; Pridemore; Regala and Rockefeller.

MINORITY recommendation: Do not pass. Signed by Senators Zarelli; Carrell; Hewitt; Honeyford; Parlette; Pflug and Schoesler.

Passed to Committee on Rules for second reading.

MOTION

On motion of Senator Eide, all measures listed on the Standing Committee report were referred to the committees as designated.

MOTION

On motion of Senator Eide, the Senate advanced to the third order of business.

MESSAGE FROM THE GOVERNOR
GUBERNATORIAL APPOINTMENTS

February 15, 2010

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

I have the honor to submit the following reappointment, subject to your confirmation.

STEPHEN THARINGER, reappointed February 15, 2010, for the term ending July 15, 2013, as Member of the Salmon Recovery Funding Board.

Sincerely,

CHRISTINE O. GREGOIRE, Governor

Referred to Committee on Natural Resources, Ocean & Recreation.

MOTION

On motion of Senator Eide, the appointee listed on the Gubernatorial Appointment report was referred to the committee as designated.

MOTION

On motion of Senator Eide, the Senate advanced to the eighth order of business.

MOTION

Senator Eide moved adoption of the following resolution:

SENATE RESOLUTION
8716

By Senators Eide and Fraser

WHEREAS, Tom Murphy began his career teaching English in Joliet, Illinois, before moving to Washington State to become principal of Redmond High School; and

WHEREAS, In 1988 Tom Murphy started as an Assistant Superintendent in Federal Way, the eighth largest school district in the state, with 23 elementary schools, seven middle schools, five high schools and almost 22,000 students. He was appointed the School Superintendent in 1999; and

WHEREAS, Superintendent Murphy has an outstanding record of accomplishment. Under his leadership Federal Way has undergone a metamorphosis into an award-winning district with several recognized schools. Federal Way was the first school district in the state to provide internet-based instruction and Federal Way High School opened the first Cambridge Program, an academically rigorous high school program affiliated with Cambridge University in England, on the West Coast; and

WHEREAS, Superintendent Murphy believes that in education, "All Truly Means All" where all children in public schools deserve equal access to a quality education that prepares them for productive, meaningful lives. With Tom Murphy at the helm, the Federal Way School District works to create individual success for every student. Standard and Poor's named Federal Way's Thomas Jefferson and Todd Beamer high schools among 51 schools in the United States that narrowed the achievement gap; and

WHEREAS, Tom and his loving wife, Rosemary, have been married for more than 39 years and blessed with four grown children and four grandchildren; and

WHEREAS, Tom Murphy will retire in 2010 after a 42-year distinguished education career where he earned the respect and support of the Federal Way Public School Board of Directors, staff, teachers, and families. The school district was selected for numerous awards resulting from his leadership and the Communities in Schools of Federal Way renamed its student mentor award to the "Tom Murphy Mentor of the Year Award";

NOW, THEREFORE, BE IT RESOLVED, That the members of the Washington State Senate honor and celebrate the educational achievements of Superintendent Tom Murphy whose dedication, professionalism, and leadership excellence have made Federal Way and the State of Washington proud; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to Tom Murphy and the Federal Way School District.

Senators Eide and Tom spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8716.

The motion by Senator Eide carried and the resolution was adopted by voice vote.

MOTION

On motion of Senator Eide, the Senate reverted to the sixth order of business.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Gordon moved that Gubernatorial Appointment No. 9139, Brian Comstock, as a member of the Lottery Commission, be confirmed.

Senator Gordon spoke in favor of the motion.

MOTION

On motion of Senator Marr, Senators Brown and Fairley were excused.

MOTION

On motion of Senator Brandland, Senators Holmquist, McCaslin, Pflug and Roach were excused.

APPOINTMENT OF BRIAN COMSTOCK

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9139, Brian Comstock as a member of the Lottery Commission.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9139, Brian Comstock as a

member of the Lottery Commission and the appointment was confirmed by the following vote: Yeas, 44; Nays, 0; Absent, 0; Excused, 5.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Fairley, Holmquist, McCaslin, Pflug and Roach

Gubernatorial Appointment No. 9139, Brian Comstock, having received the constitutional majority was declared confirmed as a member of the Lottery Commission.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Kauffman moved that Gubernatorial Appointment No. 9273, Ira Sengupta, as a member of the Board of Trustees, Renton Technical College District No. 27, be confirmed.

Senator Kauffman spoke in favor of the motion.

APPOINTMENT OF IRA SENGUPTA

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9273, Ira Sengupta as a member of the Board of Trustees, Renton Technical College District No. 27.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9273, Ira Sengupta as a member of the Board of Trustees, Renton Technical College District No. 27 and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 1; Excused, 3.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Kohl-Welles

Excused: Senators Fairley, Holmquist and McCaslin

Gubernatorial Appointment No. 9273, Ira Sengupta, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Renton Technical College District No. 27.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Eide moved that Gubernatorial Appointment No. 9211, Lorraine Lee, as Office of Administrative Hearings, Chief Administrative Law Judge be confirmed.

Senators Eide and Benton spoke in favor of passage of the motion.

APPOINTMENT OF LORRAINE LEE

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The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9211, Lorraine Lee as Office of Administrative Hearings, Chief Administrative Law Judge.

At 10:02 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:44 a.m. by President Owen.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9211, Lorraine Lee as Office of Administrative Hearings, Chief Administrative Law Judge and the appointment was confirmed by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

MESSAGE FROM THE HOUSE

March 10, 2010

Excused: Senators Fairley, Holmquist and McCaslin

Gubernatorial Appointment No. 9211, Lorraine Lee, having received the constitutional majority was declared confirmed as office of Administrative Hearings, Chief Administrative Law Judge.

MOTION

On motion of Senator Marr, Senator Brown was excused.

SECOND READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Kline moved that Gubernatorial Appointment No. 9259, Laura Jennings, as a member of the Board of Regents, Washington State University, be confirmed.

Senators Kline and Marr spoke in favor of passage of the motion.

APPOINTMENT OF LAURA JENNINGS

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9259, Laura Jennings as a member of the Board of Regents, Washington State University.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9259, Laura Jennings as a member of the Board of Regents, Washington State University and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Brown, Fairley, Holmquist and McCaslin

Gubernatorial Appointment No. 9259, Laura Jennings, having received the constitutional majority was declared confirmed as a member of the Board of Regents, Washington State University.

MOTION

MR. PRESIDENT:
The Speaker has signed:
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1149,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1317,
SUBSTITUTE HOUSE BILL 1679,
ENGROSSED SUBSTITUTE HOUSE BILL 1714,
SECOND SUBSTITUTE HOUSE BILL 1761,
HOUSE BILL 1880,
ENGROSSED SUBSTITUTE HOUSE BILL 1956,
HOUSE BILL 1966,
SECOND SUBSTITUTE HOUSE BILL 2016,
SUBSTITUTE HOUSE BILL 2179,
SUBSTITUTE HOUSE BILL 2402,
SUBSTITUTE HOUSE BILL 2443,
ENGROSSED SUBSTITUTE HOUSE BILL 2464,
SUBSTITUTE HOUSE BILL 2466,
SUBSTITUTE HOUSE BILL 2533,
SUBSTITUTE HOUSE BILL 2534,
ENGROSSED SUBSTITUTE HOUSE BILL 2538,
SUBSTITUTE HOUSE BILL 2593,
SECOND SUBSTITUTE HOUSE BILL 2603,
HOUSE BILL 2625,
SUBSTITUTE HOUSE BILL 2680,
HOUSE BILL 2681,
SUBSTITUTE HOUSE BILL 2717,
HOUSE BILL 2748,
ENGROSSED SUBSTITUTE HOUSE BILL 2752,
SUBSTITUTE HOUSE BILL 2775,
ENGROSSED SUBSTITUTE HOUSE BILL 2777,
SUBSTITUTE HOUSE BILL 2801,
ENGROSSED HOUSE BILL 2805,
SUBSTITUTE HOUSE BILL 2841,
SECOND SUBSTITUTE HOUSE BILL 2867,
SUBSTITUTE HOUSE BILL 2939,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2961,
HOUSE BILL 2973,
ENGROSSED SUBSTITUTE HOUSE BILL 2986,
HOUSE BILL 3007,
SUBSTITUTE HOUSE BILL 3016,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3026,
ENGROSSED SUBSTITUTE HOUSE BILL 3040,
SUBSTITUTE HOUSE BILL 3105,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3141,
ENGROSSED SUBSTITUTE HOUSE JOINT RESOLUTION 4220.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 10, 2010

MR. PRESIDENT:

The Speaker has signed:

SUBSTITUTE HOUSE BILL 2420,
HOUSE BILL 2460,
SECOND SUBSTITUTE HOUSE BILL 2481,
SUBSTITUTE HOUSE BILL 2503,
ENGROSSED SUBSTITUTE HOUSE BILL 2518,
ENGROSSED HOUSE BILL 2519,
SUBSTITUTE HOUSE BILL 2525,
SUBSTITUTE HOUSE BILL 2527,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL

2539,

HOUSE BILL 2540,
ENGROSSED SUBSTITUTE HOUSE BILL 2541,
SECOND SUBSTITUTE HOUSE BILL 2551,
HOUSE BILL 2621,
SUBSTITUTE HOUSE BILL 2657,
HOUSE BILL 2659,
SUBSTITUTE HOUSE BILL 2686,
HOUSE BILL 2697,
HOUSE BILL 2734,
HOUSE BILL 2735,
SECOND SUBSTITUTE HOUSE BILL 2742,
ENGROSSED SUBSTITUTE HOUSE BILL 2747,
SUBSTITUTE HOUSE BILL 2990,
SUBSTITUTE HOUSE BILL 3036.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 9, 2010

MR. PRESIDENT:

The House has passed:

ENGROSSED SECOND SUBSTITUTE HOUSE BILL
2956,

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 9, 2010

MR. PRESIDENT:

The House receded from its amendment(s) to ENGROSSED SUBSTITUTE SENATE BILL NO. 6538. Under suspension of the rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 6538-S.E AMH CODY H5611.3, and passed the bill as amended by the House.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 48.43.005 and 2008 c 145 s 20 and 2008 c 144 s 1 are each reenacted and amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(4) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(5) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. The adjusted amount shall apply on the following January 1st.

(6) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(7) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(8) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(9) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(10) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

(11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

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(12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(13) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(14) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(15) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(16) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(17) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(18) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(19) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other

fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage; and

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(20) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(22) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(23) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(24) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least ~~((two))~~ one but no more than fifty employees, during the previous calendar year and employed at least ~~((two))~~ one employee(s) on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor ~~((who is covered as a group of one on the day prior to June 10, 2004, shall also be considered a "small employer" to the extent that individual or group of one is entitled to have his or her coverage renewed as provided in RCW 48.43.035(6))~~ who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed

the appropriate internal revenue service form 1040, for the previous taxable year.

(25) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(26) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

Sec. 2. RCW 48.43.035 and 2004 c 244 s 4 are each amended to read as follows:

For group health benefit plans, the following shall apply:

(1) All health carriers shall accept for enrollment any state resident within the group to whom the plan is offered and within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The insurance commissioner may grant a temporary exemption from this subsection, if, upon application by a health carrier the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals.

(2) Except as provided in subsection (5) of this section, all health plans shall contain or incorporate by endorsement a guarantee of the continuity of coverage of the plan. For the purposes of this section, a plan is "renewed" when it is continued beyond the earliest date upon which, at the carrier's sole option, the plan could have been terminated for other than nonpayment of premium. The carrier may consider the group's anniversary date as the renewal date for purposes of complying with the provisions of this section.

(3) The guarantee of continuity of coverage required in health plans shall not prevent a carrier from canceling or nonrenewing a health plan for:

(a) Nonpayment of premium;

(b) Violation of published policies of the carrier approved by the insurance commissioner;

(c) Covered persons entitled to become eligible for medicare benefits by reason of age who fail to apply for a medicare supplement plan or medicare cost, risk, or other plan offered by the carrier pursuant to federal laws and regulations;

(d) Covered persons who fail to pay any deductible or copayment amount owed to the carrier and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the carrier;

(f) Covered persons who materially breach the health plan; or

(g) Change or implementation of federal or state laws that no longer permit the continued offering of such coverage.

(4) The provisions of this section do not apply in the following cases:

(a) A carrier has zero enrollment on a product;

(b) A carrier replaces a product and the replacement product is provided to all covered persons within that class or line of business, includes all of the services covered under the replaced product, and does not significantly limit access to the kind of services covered under the replaced product. The health plan may also allow unrestricted conversion to a fully comparable product;

(c) No sooner than January 1, 2005, a carrier discontinues offering a particular type of health benefit plan offered for groups of up to two hundred if: (i) The carrier provides notice to each group

of the discontinuation at least ninety days prior to the date of the discontinuation; (ii) the carrier offers to each group provided coverage of this type the option to enroll, with regard to small employer groups, in any other small employer group plan, or with regard to groups of up to two hundred, in any other applicable group plan, currently being offered by the carrier in the applicable group market; and (iii) in exercising the option to discontinue coverage of this type and in offering the option of coverage under (c)(ii) of this subsection, the carrier acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for this coverage;

(d) A carrier discontinues offering all health coverage in the small group market or for groups of up to two hundred, or both markets, in the state and discontinues coverage under all existing group health benefit plans in the applicable market involved if: (i) The carrier provides notice to the commissioner of its intent to discontinue offering all such coverage in the state and its intent to discontinue coverage under all such existing health benefit plans at least one hundred eighty days prior to the date of the discontinuation of coverage under all such existing health benefit plans; and (ii) the carrier provides notice to each covered group of the intent to discontinue the existing health benefit plan at least one hundred eighty days prior to the date of discontinuation. In the case of discontinuation under this subsection, the carrier may not issue any group health coverage in this state in the applicable group market involved for a five-year period beginning on the date of the discontinuation of the last health benefit plan not so renewed. This subsection (4) does not require a carrier to provide notice to the commissioner of its intent to discontinue offering a health benefit plan to new applicants when the carrier does not discontinue coverage of existing enrollees under that health benefit plan; or

(e) A carrier is withdrawing from a service area or from a segment of its service area because the carrier has demonstrated to the insurance commissioner that the carrier's clinical, financial, or administrative capacity to serve enrollees would be exceeded.

(5) The provisions of this section do not apply to health plans deemed by the insurance commissioner to be unique or limited or have a short-term purpose, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((6) Notwithstanding any other provision of this section, the guarantee of continuity of coverage applies to a group of one only if: (a) The carrier continues to offer any other small employer group plan in which the group of one was eligible to enroll on the day prior to June 10, 2004; and (b) the person continues to qualify as a group of one under the criteria in place on the day prior to June 10, 2004.))~~

Sec. 3. RCW 48.44.010 and 2007 c 267 s 2 are each amended to read as follows:

For the purposes of this chapter:

(1) "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

(2) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes health care services and is licensed to furnish such services.

(3) "Health care service contractor" means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services. "Health care service contractor" does not include direct patient-provider primary care practices as defined in RCW 48.150.010.

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(4) "Participating provider" means a provider, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services.

(5) "Enrolled participant" means a person or group of persons who have entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health care service contractor to receive health care services.

(6) "Commissioner" means the insurance commissioner.

(7) "Uncovered expenditures" means the costs to the health care service contractor for health care services that are the obligation of the health care service contractor for which an enrolled participant would also be liable in the event of the health care service contractor's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health care service contractor, or for services that are guaranteed, insured or assumed by a person or organization other than the health care service contractor.

(8) "Copayment" means an amount specified in a group or individual contract which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(9) "Deductible" means the amount an enrolled participant is responsible to pay before the health care service contractor begins to pay the costs associated with treatment.

(10) "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specific group. The group contract may include coverage for dependents.

(11) "Individual contract" means a contract for health care services issued to and covering an individual. An individual contract may include dependents.

(12) "Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

(13) "Replacement coverage" means the benefits provided by a succeeding carrier.

(14) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(15) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.44.037(3) and are recorded as equity.

(16) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt.

(17) "Census date" means the date upon which a health care services contractor offering coverage to a small employer must base rate calculations. For a small employer applying for a health benefit plan through a contractor other than its current contractor, the census date is the date that final group composition is received by the contractor. For a small employer that is renewing its health benefit plan through its existing contractor, the census date is ninety days prior to the effective date of the renewal.

Sec. 4. RCW 48.44.023 and 2009 c 131 s 2 are each amended to read as follows:

(1)(a) A health care services contractor offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a contractor from offering, or a small employer from

purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A contractor offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

(2) Nothing in this section shall prohibit a health care service contractor from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) On the census date, as defined in RCW 48.44.010, rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, and differences in census date between new and renewal groups, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(k) If the rate developed under this section varies the adjusted community rate for the factors listed in (a) of this subsection, the date for determining those factors must be no more than ninety days prior to the effective date of the health benefit plan.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection and subsection (3)(g) of this section, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A contractor may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

Sec. 5. RCW 48.46.020 and 1990 c 119 s 1 are each amended to read as follows:

As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context indicates otherwise.

(1) "Health maintenance organization" means any organization receiving a certificate of registration by the commissioner under this chapter which provides comprehensive health care services to enrolled participants of such organization on a group practice per capita prepayment basis or on a prepaid individual practice plan, except for an enrolled participant's responsibility for copayments and/or deductibles, either directly or through contractual or other arrangements with other institutions, entities, or persons, and which qualifies as a health maintenance organization pursuant to RCW 48.46.030 and 48.46.040.

(2) "Comprehensive health care services" means basic consultative, diagnostic, and therapeutic services rendered by licensed health professionals together with emergency and preventive care, inpatient hospital, outpatient and physician care, at a minimum, and any additional health care services offered by the health maintenance organization.

(3) "Enrolled participant" means a person who or group of persons which has entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(4) "Health professionals" means health care practitioners who are regulated by the state of Washington.

(5) "Health maintenance agreement" means an agreement for services between a health maintenance organization which is registered pursuant to the provisions of this chapter and enrolled participants of such organization which provides enrolled participants with comprehensive health services rendered to enrolled participants by health professionals, groups, facilities, and other personnel associated with the health maintenance organization.

(6) "Consumer" means any member, subscriber, enrollee, beneficiary, or other person entitled to health care services under terms of a health maintenance agreement, but not including health professionals, employees of health maintenance organizations, partners, or shareholders of stock corporations licensed as health maintenance organizations.

(7) "Meaningful role in policy making" means a procedure approved by the commissioner which provides consumers or elected representatives of consumers a means of submitting the views and recommendations of such consumers to the governing board of such

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organization coupled with reasonable assurance that the board will give regard to such views and recommendations.

(8) "Meaningful grievance procedure" means a procedure for investigation of consumer grievances in a timely manner aimed at mutual agreement for settlement according to procedures approved by the commissioner, and which may include arbitration procedures.

(9) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes any health care services and is licensed or otherwise authorized to furnish such services.

(10) "Department" means the state department of social and health services.

(11) "Commissioner" means the insurance commissioner.

(12) "Group practice" means a partnership, association, corporation, or other group of health professionals:

(a) The members of which may be individual health professionals, clinics, or both individuals and clinics who engage in the coordinated practice of their profession; and

(b) The members of which are compensated by a prearranged salary, or by capitation payment or drawing account that is based on the number of enrolled participants.

(13) "Individual practice health care plan" means an association of health professionals in private practice who associate for the purpose of providing prepaid comprehensive health care services on a fee-for-service or capitation basis.

(14) "Uncovered expenditures" means the costs to the health maintenance organization of health care services that are the obligation of the health maintenance organization for which an enrolled participant would also be liable in the event of the health maintenance organization's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health maintenance organization, or for services that are guaranteed, insured, or assumed by a person or organization other than the health maintenance organization.

(15) "Copayment" means an amount specified in a subscriber agreement which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(16) "Deductible" means the amount an enrolled participant is responsible to pay out-of-pocket before the health maintenance organization begins to pay the costs associated with treatment.

(17) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.46.235(3) and are recorded as equity.

(18) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt.

(19) "Participating provider" means a provider as defined in subsection (9) of this section who contracts with the health maintenance organization or with its contractor or subcontractor and has agreed to provide health care services to enrolled participants with an expectation of receiving payment, other than copayment or deductible, directly or indirectly, from the health maintenance organization.

(20) "Carrier" means a health maintenance organization, an insurer, a health care services contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual agreement.

(21) "Replacement coverage" means the benefits provided by a succeeding carrier.

(22) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

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(23) "Census date" means the date upon which a health maintenance organization offering coverage to a small employer must base rate calculations. For a small employer applying for a health benefit plan through a health maintenance organization other than its current health maintenance organization, the census date is the date that final group composition is received by the health maintenance organization. For a small employer that is renewing its health benefit plan through its existing health maintenance organization, the census date is ninety days prior to the effective date of the renewal.

Sec. 6. RCW 48.46.066 and 2009 c 131 s 3 are each amended to read as follows:

(1)(a) A health maintenance organization offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A health maintenance organization offering a health benefit plan under this subsection shall clearly disclose all the covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530.

(2) Nothing in this section shall prohibit a health maintenance organization from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program

or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) On the census date, as defined in RCW 48.46.020, rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, and differences in census date between new and renewal groups, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program

and will not affect small group health plans offered outside the partnership.

(k) If the rate developed under this section varies the adjusted community rate for the factors listed in (a) of this subsection, the date for determining those factors must be no more than ninety days prior to the effective date of the health benefit plan.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection and subsection (3)(g) of this section, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

- (i) One hundred percent of eligible employees working for groups with three or less employees; and
- (ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

Sec. 7. RCW 48.21.045 and 2009 c 131 s 1 are each amended to read as follows:

(1)(a) An insurer offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. An insurer offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320.

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(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) On the census date, as defined in RCW 48.21.047, rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, and differences in census date between new and renewal groups, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier

may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(k) If the rate developed under this section varies the adjusted community rate for the factors listed in (a) of this subsection, the date for determining those factors must be no more than ninety days prior to the effective date of the health benefit plan.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection and subsection (3)(g) of this section, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

- (i) One hundred percent of eligible employees working for groups with three or less employees; and
- (ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance

partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005.

Sec. 8. RCW 48.21.047 and 2005 c 223 s 11 are each amended to read as follows:

(1) An insurer may not offer any health benefit plan to any small employer without complying with RCW 48.21.045(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and the plans are not subject to RCW 48.21.045(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005.

(4) For purposes of this section, "census date" has the same meaning as defined in RCW 48.44.010.

NEW SECTION. Sec. 9. This act applies to policies issued or renewed on or after January 1, 2011.

NEW SECTION. Sec. 10. If federal legislation that includes guaranteed issue for individuals who purchase health coverage through the individual or small group market has not been signed by the President of the United States by December 31, 2010, sections 1 and 2 of this act are null and void.

NEW SECTION. Sec. 11. Sections 1 and 2 of this act take effect one hundred eighty days after the date the insurance commissioner certifies to the secretary of the senate, the chief clerk of the house of representatives, and the code reviser's office that federal legislation has been signed into law by the President of the United States that includes guaranteed issue for individuals who purchase health coverage through the individual or small group markets."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6538.

Senator Keiser spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Keiser that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6538.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 6538 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6538, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6538, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Pflug

Excused: Senator McCaslin

ENGROSSED SUBSTITUTE SENATE BILL NO. 6538, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

March 5, 2010

MR. PRESIDENT:

The House passed SECOND SUBSTITUTE SENATE BILL NO. 6575 with the following amendment(s): 6575-S2 AMH ENGR H5533.E

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.27.340 and 1997 c 314 s 17 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, a contractor found to have committed an infraction under RCW 18.27.200 shall be assessed a monetary penalty of not less than two hundred dollars and not more than five thousand dollars.

(2) The director may waive collection in favor of payment of restitution to a consumer complainant.

(3) A contractor found to have committed an infraction under RCW 18.27.200 for failure to register shall be assessed a fine of not less than one thousand dollars, nor more than five thousand dollars. For a first offense, the director may reduce the penalty for failure to register, but in no case below five hundred dollars, if the person; Becomes registered within ten days of receiving a notice of infraction ((and the notice of infraction is for a first offense)); and registers for a department-approved contractor training class under section 2 of this act within ten days of receiving a notice of infraction, completes the class within one hundred twenty days of receiving the notice of infraction, and pays any required class fees upon class registration.

(4) Until July 1, 2011, m onetary penalties collected under this chapter shall be deposited in the general fund. Beginning July 1, 2011, monetary penalties and class fees collected under this chapter shall be deposited in the contractor registration account created in section 4 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 18.27 RCW to read as follows:

The department will approve or conduct contractor training classes and charge a fee, payable upon class registration, that covers the costs of administering the class. The department may adopt rules relating to the number of classes to be offered by the department, the locations of these classes, class fees, and curriculum. In determining the locations of these classes, the department may consider offering online classes and ensure that classes are reasonably accessible in eastern and western

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Washington. The department shall deposit all fees in the contractor registration account created in section 4 of this act.

Sec. 3. RCW 18.27.070 and 1997 c 314 s 7 are each amended to read as follows:

(1) The department shall charge fees for issuance, renewal, and reinstatement of certificates of registration; and changes of name, address, or business structure. The department shall set the fees by rule.

(2) The entire amount of the fees are to be used solely to cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs shall include reproduction, travel, per diem, and administrative and legal support costs.

(3) The department shall deposit all fees in the contractor registration account created in section 4 of this act.

NEW SECTION. **Sec. 4.** A new section is added to chapter 18.27 RCW to read as follows:

The contractor registration account is created in the state treasury. The department shall deposit in the account all moneys from registrations, renewals, or civil penalties assessed and collected under this chapter. Appropriations from the account may be made only for the purposes of administration and enforcement of this chapter, including conducting contractor training classes under section 2 of this act.

Sec. 5. RCW 60.28.040 and 2009 c 432 s 7 and 2009 c 219 s 7 are each reenacted and amended to read as follows:

(1) Subject to subsection (5) of this section, the amount of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is thirty-five thousand dollars or more, shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(2) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is ~~((twenty))~~ thirty-five thousand dollars or more, the amount of all other taxes, increases, and penalties under Title 82 RCW, due and owing from the contractor, shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(3) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, the amount of all taxes, increases, and penalties due or to become due under Titles 50 and 51 RCW from the contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is ~~((twenty))~~ thirty-five thousand dollars or more, shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(4) Subject to subsection (5) of this section, the amount of all other taxes, increases, and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

(5) The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens.

NEW SECTION. **Sec. 6.** Sections 3 and 4 of this act take effect July 1, 2011.

Correct the title.
and the same are herewith transmitted.

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BARBARA BAKER, Chief Clerk

MOTION

Senator Kohl-Welles moved that the Senate concur in the House amendment(s) to Second Substitute Senate Bill No. 6575.
Senator Kohl-Welles spoke in favor of the motion.
Senator Schoesler spoke against the motion.

The President declared the question before the Senate to be the motion by Senator Kohl-Welles that the Senate concur in the House amendment(s) to Second Substitute Senate Bill No. 6575.

The motion by Senator Kohl-Welles carried and the Senate concurred in the House amendment(s) to Second Substitute Senate Bill No. 6575 by voice vote.

The President declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 6575, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 6575, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 36; Nays, 12; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Sheldon, Shin, Swecker and Tom

Voting nay: Senators Becker, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, Morton, Schoesler, Stevens and Zarelli

Excused: Senator McCaslin

SECOND SUBSTITUTE SENATE BILL NO. 6575, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

March 9, 2010

MR. PRESIDENT:

The House receded from its amendment(s) to SUBSTITUTE SENATE BILL NO. 6548. Under suspension of the rules, the bill was returned to second reading for the purpose of an amendment. The House adopted the following amendment: 6548-S AMH KELL MERE 189, and passed the bill as amended by the House.

On page 2, line 35, after "**Sec. 2.**" strike "This" and insert "Section 1 of this"

On page 3, line 1, after "date of" insert "section 1 of"

On page 3, after line 2, insert the following:

NEW SECTION. **Sec. 3.** The legislature has determined that it is necessary to examine patterns related to the exchange of out-of-state offenders needing supervision. The examination must assess the past action and behavior of other states that send offenders to the state of Washington for supervision to assure that the interstate compact for adult offender supervision operates to protect the safety of the people and communities of Washington and other individual states.

NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW to read as follows:

(1) The department shall identify the states from which it receives adult offenders who need supervision and examine the

feasibility and cost of establishing memoranda of understanding with the states that send the highest number of offenders for supervision to Washington state with the goal of achieving more balanced and equitable obligations under the interstate compact for adult offender supervision.

(2) At the next meeting of the interstate compact commission, Washington's representatives on the commission shall seek a resolution by the commission regarding:

(a) Any inequitable distribution of costs, benefits, and obligations affecting Washington under the interstate compact; and

(b) The scope of the mandatory acceptance policy and the authority of the receiving state to determine when it is no longer able to supervise an offender.

(3) The department shall examine the feasibility and cost of withdrawal from the interstate compact for adult offender supervision.

(4) The department shall report to the legislature no later than December 1, 2010, regarding:

(a) The development of memoranda of understanding with states that send the highest numbers of offenders to Washington state for supervision;

(b) The outcome of the resolution process with the interstate commission; and

(c) The feasibility and cost of withdrawal from the interstate compact for adult offender supervision.

NEW SECTION. Sec. 5. Sections 3 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2010."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6548.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6548.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6548 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6548, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6548, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator McCaslin

SUBSTITUTE SENATE BILL NO. 6548, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 12:01 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 1:38 p.m. by President Owen.

SIGNED BY THE PRESIDENT

The President signed:

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1149,

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1317,

SUBSTITUTE HOUSE BILL 1679,

ENGROSSED SUBSTITUTE HOUSE BILL 1714,

SECOND SUBSTITUTE HOUSE BILL 1761,

HOUSE BILL 1880,

ENGROSSED SUBSTITUTE HOUSE BILL 1956,

HOUSE BILL 1966,

SUBSTITUTE HOUSE BILL 2420,

HOUSE BILL 2460,

SECOND SUBSTITUTE HOUSE BILL 2481,

SUBSTITUTE HOUSE BILL 2503,

ENGROSSED SUBSTITUTE HOUSE BILL 2518,

ENGROSSED HOUSE BILL 2519,

SUBSTITUTE HOUSE BILL 2525,

SUBSTITUTE HOUSE BILL 2527,

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2539,

HOUSE BILL 2540,

ENGROSSED SUBSTITUTE HOUSE BILL 2541,

SECOND SUBSTITUTE HOUSE BILL 2551,

HOUSE BILL 2621,

SUBSTITUTE HOUSE BILL 2657,

HOUSE BILL 2659,

SUBSTITUTE HOUSE BILL 2686,

HOUSE BILL 2697,

HOUSE BILL 2734,

HOUSE BILL 2735,

SECOND SUBSTITUTE HOUSE BILL 2742,

ENGROSSED SUBSTITUTE HOUSE BILL 2747,

SUBSTITUTE HOUSE BILL 2990,

SUBSTITUTE HOUSE BILL 3036.

MESSAGE FROM THE HOUSE

March 10, 2010

MR. PRESIDENT:

The Speaker has signed:

SUBSTITUTE SENATE BILL 5295,

ENGROSSED SUBSTITUTE SENATE BILL 5529,

ENGROSSED SUBSTITUTE SENATE BILL 5543,

ENGROSSED SUBSTITUTE SENATE BILL 5704,

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5742,

SUBSTITUTE SENATE BILL 6192,

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SUBSTITUTE SENATE BILL 6202,
SENATE BILL 6206,

SECOND READING

SUBSTITUTE SENATE BILL 6207,
SUBSTITUTE SENATE BILL 6208,
SUBSTITUTE SENATE BILL 6214,
SENATE BILL 6218,
SENATE BILL 6219,SUBSTITUTE SENATE BILL 6248,
ENGROSSED SENATE BILL 6261,
SUBSTITUTE SENATE BILL 6329,
SUBSTITUTE SENATE BILL 6332,
SUBSTITUTE SENATE BILL 6340,
SUBSTITUTE SENATE BILL 6342,
SUBSTITUTE SENATE BILL 6343,
SUBSTITUTE SENATE BILL 6346,
SUBSTITUTE SENATE BILL 6356,ENGROSSED SUBSTITUTE SENATE BILL 6359,
SUBSTITUTE SENATE BILL 6361,
SUBSTITUTE SENATE BILL 6363,
SUBSTITUTE SENATE BILL 6373,
SENATE BILL 6379,ENGROSSED SUBSTITUTE SENATE BILL 6392,
SENATE BILL 6418,
SUBSTITUTE SENATE BILL 6459,
SENATE BILL 6540,
SUBSTITUTE SENATE BILL 6557,
SUBSTITUTE SENATE BILL 6590,
SUBSTITUTE SENATE BILL 6673,
ENGROSSED SUBSTITUTE SENATE BILL 6724,
ENGROSSED SENATE BILL 6764,
SENATE JOINT MEMORIAL 8025.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 8, 2010

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2424 and asks the Senate to recede therefrom.
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kline moved that the Senate recede from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2424.

The President declared the question before the Senate to be motion by Senator Kline that the Senate recede from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2424.

The motion by Senator Kline carried and the Senate receded from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2424 by voice vote.

MOTION

On motion of Senator Kline, the rules were suspended and Engrossed Substitute House Bill No. 2424 was returned to second reading for the purposes of amendment.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2424, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives O'Brien, Pearson, Hurst, Takko, Herrera, Chandler, Ross, Rodne, Dammeier, Condotta, Shea, Klippert, Smith, Walsh, Parker, McCune, Campbell, Johnson, Eddy, Morrell, Kelley, Short, Sullivan, Conway, Kagi, Roach, Kristiansen, Bailey, Haler, Schmick, Ericks, Warnick, Ormsby, Moeller and Hope)

Protecting children from sexual exploitation and abuse.

The measure was read the second time.

MOTION

Senator Kline moved that the following striking amendment by Senator Kline and others be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 9.68A.001 and 2007 c 368 s 1 are each amended to read as follows:

The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

The legislature further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

The legislature further finds that due to the changing nature of technology, offenders are now able to access child pornography in different ways and in increasing quantities. By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of the legislature to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct. It is also the intent of the legislature to clarify, in response to State v. Sutherby, 204 P.3d 916 (2009), the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the legislature that the first degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or image unit of prosecution, while the second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of prosecution as established in State v. Sutherby, 204 P.3d 916 (2009). Furthermore, it is the intent of the legislature to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each separate session of intentionally

viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.

NEW SECTION. Sec. 2. A new section is added to chapter 9.68A RCW to read as follows:

This chapter does not apply to lawful conduct between spouses.

Sec. 3. RCW 9.68A.011 and 2002 c 70 s 1 are each amended to read as follows:

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

(1) An "internet session" means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.

(2) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.

~~((2))~~ (3) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

~~((3))~~ (4) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse ~~((for the purpose of sexual stimulation of the viewer));~~

~~((e))~~ (e) ((Exhibition of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer;

~~((f))~~ (f) Defecation or urination for the purpose of sexual stimulation of the viewer;

(g) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

~~((4))~~ (5) "Minor" means any person under eighteen years of age.

~~((5))~~ (6) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

Sec. 4. RCW 9.68A.050 and 1989 c 32 s 3 are each amended to read as follows:

~~((A person who:))~~

(1)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells ~~((any))~~ a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

~~((2))~~ (ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is ~~((guilty of))~~ a class ~~((C))~~ B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of dealing in depictions of a

minor engaged in sexually explicit conduct in the second degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of dealing in one or more depictions or images of visual or printed matter constitutes a separate offense.

Sec. 5. RCW 9.68A.060 and 1989 c 32 s 4 are each amended to read as follows:

(1)(a) A person ~~((who))~~ commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, ~~((any))~~ a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is ~~((guilty of))~~ a class ~~((C))~~ B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense.

Sec. 6. RCW 9.68A.070 and 2006 c 139 s 3 are each amended to read as follows:

(1)(a) A person ~~((who))~~ commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is ~~((guilty of))~~ a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Possession of depictions of a minor engaged in sexually

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explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

NEW SECTION. Sec. 7. A new section is added to chapter 9.68A RCW to read as follows:

(1) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a class B felony punishable under chapter 9A.20 RCW.

(2) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the second degree, a class C felony punishable under chapter 9A.20 RCW.

(3) For the purposes of determining whether a person intentionally viewed over the internet a visual or printed matter depicting a minor engaged in sexually explicit conduct in subsection (1) or (2) of this section, the trier of fact shall consider the title, text, and content of the visual or printed matter, as well as the internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, number of visual or printed matter depicting minors engaged in sexually explicit conduct, defendant's access to and control over the electronic device and its contents upon which the visual or printed matter was found, or any other relevant evidence. The state must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

(4) For the purposes of this section, each separate internet session of intentionally viewing over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense.

Sec. 8. RCW 9.68A.110 and 2007 c 368 s 3 are each amended to read as follows:

(1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100. ~~((This chapter does not apply to lawful conduct between spouses.))~~

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, ~~((9.68A.070, or section 7 of this act,~~ it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW. Nothing in this act is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, ~~((9.68A.070, or section 7 of this act,~~ the state is not required to establish the identity of the alleged victim.

(6) In a prosecution under RCW 9.68A.070 or section 7 of this act, it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:

(i) He or she was engaged in a research activity;

(ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher learning; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or

(b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:

(i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;

(ii) The research is directly related to a legislative activity; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.

(c) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct.

Sec. 9. RCW 9.94A.515 and 2008 c 108 s 23 and 2008 c 38 s 1 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))

- XII Assault 1 (RCW 9A.36.011)
 Assault of a Child 1 (RCW 9A.36.120)
 Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
 Rape 1 (RCW 9A.44.040)
 Rape of a Child 1 (RCW 9A.44.073)
 Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
 Rape 2 (RCW 9A.44.050)
 Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
 Criminal Mistreatment 1 (RCW 9A.42.020)
 Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 Kidnapping 1 (RCW 9A.40.020)
 Leading Organized Crime (RCW 9A.82.060(1)(a))
 Malicious explosion 3 (RCW 70.74.280(3))
 Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
 Assault of a Child 2 (RCW 9A.36.130)
 Explosive devices prohibited (RCW 70.74.180)
 Hit and Run--Death (RCW 46.52.020(4)(a))
 Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 Malicious placement of an explosive 2 (RCW 70.74.270(2))
 Robbery 1 (RCW 9A.56.200)
 Sexual Exploitation (RCW 9.68A.040)
 Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 Manslaughter 2 (RCW 9A.32.070)
 Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
- Promoting Prostitution 1 (RCW 9A.88.070)
 Theft of Ammonia (RCW 69.55.010)
 Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
 Child Molestation 2 (RCW 9A.44.086)
 Civil Disorder Training (RCW 9A.48.120)
 Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
 Drive-by Shooting (RCW 9A.36.045)
 Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
 Introducing Contraband 1 (RCW 9A.76.140)
 Malicious placement of an explosive 3 (RCW 70.74.270(3))
 Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
 Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
 Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
 Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
 Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
 Bribery (RCW 9A.68.010)
 Incest 1 (RCW 9A.64.020(1))
 Intimidating a Judge (RCW 9A.72.160)
 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
 Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
 Rape of a Child 3 (RCW 9A.44.079)
 Theft of a Firearm (RCW 9A.56.300)
 Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)

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Advancing money or property for extortionate extension of credit (RCW 9A.82.030)	79A.60.060)
Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))	Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
Child Molestation 3 (RCW 9A.44.089)	Cheating 1 (RCW 9.46.1961)
Criminal Mistreatment 2 (RCW 9A.42.030)	Commercial Bribery (RCW 9A.68.060)
Custodial Sexual Misconduct 1 (RCW 9A.44.160)	Counterfeiting (RCW 9.16.035(4))
<u>Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))</u>	Endangerment with a Controlled Substance (RCW 9A.42.100)
Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)	Escape 1 (RCW 9A.76.110)
Driving While Under the Influence (RCW 46.61.502(6))	Hit and Run--Injury (RCW 46.52.020(4)(b))
Extortion 1 (RCW 9A.56.120)	Hit and Run with Vessel--Injury Accident (RCW 79A.60.200(3))
Extortionate Extension of Credit (RCW 9A.82.020)	Identity Theft 1 (RCW 9.35.020(2))
Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)	Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
Incest 2 (RCW 9A.64.020(2))	Influencing Outcome of Sporting Event (RCW 9A.82.070)
Kidnapping 2 (RCW 9A.40.030)	Malicious Harassment (RCW 9A.36.080)
Perjury 1 (RCW 9A.72.020)	<u>Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68.070(2))</u>
Persistent prison misbehavior (RCW 9.94.070)	Residential Burglary (RCW 9A.52.025)
Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))	Robbery 2 (RCW 9A.56.210)
Possession of a Stolen Firearm (RCW 9A.56.310)	Theft of Livestock 1 (RCW 9A.56.080)
Rape 3 (RCW 9A.44.060)	Threats to Bomb (RCW 9.61.160)
Rendering Criminal Assistance 1 (RCW 9A.76.070)	Trafficking in Stolen Property 1 (RCW 9A.82.050)
<u>Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))</u>	Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
Sexual Misconduct with a Minor 1 (RCW 9A.44.093)	Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
Sexually Violating Human Remains (RCW 9A.44.105)	Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
Stalking (RCW 9A.46.110)	Unlawful transaction of insurance business (RCW 48.15.023(3))
Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)	Unlicensed practice as an insurance professional (RCW 48.17.063((3))) (2))
IV Arson 2 (RCW 9A.48.030)	Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
Assault 2 (RCW 9A.36.021)	Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))	<u>Viewing of Depictions of a Minor Engaged in Sexually Explicit</u>
Assault by Watercraft (RCW	

<u>Conduct 1 (section 7(1) of this act)</u>	<u>(RCW 9.61.230(2))</u>
Willful Failure to Return from Furlough (RCW 72.66.060)	Theft of Livestock 2 (RCW 9A.56.083)
III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))	Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))	Trafficking in Stolen Property 2 (RCW 9A.82.055)
Assault of a Child 3 (RCW 9A.36.140)	Unlawful Imprisonment (RCW 9A.40.040)
Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))	Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
Burglary 2 (RCW 9A.52.030)	Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
Commercial Sexual Abuse of a Minor (RCW 9.68A.100)	Willful Failure to Return from Work Release (RCW 72.65.070)
Communication with a Minor for Immoral Purposes (RCW 9.68A.090)	II Computer Trespass 1 (RCW 9A.52.110)
Criminal Gang Intimidation (RCW 9A.46.120)	Counterfeiting (RCW 9.16.035(3))
Custodial Assault (RCW 9A.36.100)	Escape from Community Custody (RCW 72.09.310)
Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))	Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130(11)(a))
Escape 2 (RCW 9A.76.120)	Health Care False Claims (RCW 48.80.030)
Extortion 2 (RCW 9A.56.130)	Identity Theft 2 (RCW 9.35.020(3))
Harassment (RCW 9A.46.020)	Improperly Obtaining Financial Information (RCW 9.35.010)
Intimidating a Public Servant (RCW 9A.76.180)	Malicious Mischief 1 (RCW 9A.48.070)
Introducing Contraband 2 (RCW 9A.76.150)	Organized Retail Theft 2 (RCW 9A.56.350(3))
Malicious Injury to Railroad Property (RCW 81.60.070)	Possession of Stolen Property 1 (RCW 9A.56.150)
Mortgage Fraud (RCW 19.144.080)	Possession of a Stolen Vehicle (RCW 9A.56.068)
Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)	Retail Theft with Extenuating Circumstances 2 (RCW 9A.56.360(3))
Organized Retail Theft 1 (RCW 9A.56.350(2))	Theft 1 (RCW 9A.56.030)
Perjury 2 (RCW 9A.72.030)	Theft of a Motor Vehicle (RCW 9A.56.065)
Possession of Incendiary Device (RCW 9.40.120)	Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)	Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
Promoting Prostitution 2 (RCW 9A.88.080)	Trafficking in Insurance Claims (RCW 48.30A.015)
Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))	Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
Securities Act violation (RCW 21.20.400)	Unlawful Practice of Law (RCW 2.48.180)
Tampering with a Witness (RCW 9A.72.120)	Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
Telephone Harassment (subsequent conviction or threat of death)	Voyeurism (RCW 9A.44.115)

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- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(((4)))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW 9.91.144)
- Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 10. RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are each reenacted and amended to read as follows:

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

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

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

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

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of section 7 of this act, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

Sec. 11. RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the

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offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association

with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(21) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(22) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(23) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(24) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(25) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(26) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(27) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(28) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(29) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(30) "Nonviolent offense" means an offense which is not a violent offense.

(31) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(32) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(33) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

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(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(34) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (34)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(35) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; ~~(iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or~~ (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(36) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(37) "Public school" has the same meaning as in RCW 28A.150.010.

(38) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(39) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(40) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(41) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;

- (viii) Assault of a child in the first degree; or
- (ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or
- (b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.
- (42) "Sex offense" means:
 - (a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);
 - (ii) A violation of RCW 9A.64.020;
 - (iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or
 - (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;
 - (b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;
 - (c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or
 - (d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.
- (43) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.
- (44) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.
- (45) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.
- (46) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.
- (47) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
- (48) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.
- (49) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.
- (50) "Violent offense" means:
 - (a) Any of the following felonies:
 - (i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;
 - (ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;
 - (iii) Manslaughter in the first degree;
 - (iv) Manslaughter in the second degree;
 - (v) Indecent liberties if committed by forcible compulsion;
 - (vi) Kidnapping in the second degree;
 - (vii) Arson in the second degree;
 - (viii) Assault in the second degree;
 - (ix) Assault of a child in the second degree;
 - (x) Extortion in the first degree;
 - (xi) Robbery in the second degree;
 - (xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(51) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(52) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(53) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school."

Senator Kline spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Kline and others to Engrossed Substitute House Bill No. 2424.

The motion by Senator Kline carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "abuse;" strike the remainder of the title and insert "amending RCW 9.68A.001, 9.68A.011, 9.68A.050, 9.68A.060, 9.68A.070, 9.68A.110, and 9.94A.030; reenacting and amending RCW 9.94A.515 and 9.94A.535; adding new sections to chapter 9.68A RCW; and prescribing penalties."

MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 2424 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2424 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2424 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon,

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Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Jacobsen

Excused: Senator McCaslin

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2424 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SIGNED BY THE PRESIDENT

The President signed:

- SENATE BILL 6243,
- SENATE BILL 6308,
- SUBSTITUTE SENATE BILL 6344,
- SUBSTITUTE SENATE BILL 6349,
- SUBSTITUTE SENATE BILL 6350,
- ENGROSSED SUBSTITUTE SENATE BILL 6381,
- SENATE BILL 6401,
- ENGROSSED SUBSTITUTE SENATE BILL 6403,
- ENGROSSED SUBSTITUTE SENATE BILL 6468,
- SUBSTITUTE SENATE BILL 6470,
- ENGROSSED SUBSTITUTE SENATE BILL 6476,
- SENATE BILL 6481,
- SUBSTITUTE SENATE BILL 6485,
- ENGROSSED SECOND SUBSTITUTE SENATE BILL 6561,
- ENGROSSED SUBSTITUTE SENATE BILL 6582,
- SENATE BILL 6593,
- ENGROSSED SECOND SUBSTITUTE SENATE BILL 6609,
- SUBSTITUTE SENATE BILL 6614,
- SUBSTITUTE SENATE BILL 6639,
- SUBSTITUTE SENATE BILL 6647,
- SECOND SUBSTITUTE SENATE BILL 6667,
- SECOND SUBSTITUTE SENATE BILL 6679,
- SUBSTITUTE SENATE BILL 6688,
- SUBSTITUTE SENATE BILL 6692,
- SECOND SUBSTITUTE SENATE BILL 6702,
- ENGROSSED SUBSTITUTE SENATE BILL 6726,
- SENATE BILL 6826,
- SUBSTITUTE SENATE BILL 6832.

MESSAGE FROM THE HOUSE

March 8, 2010

MR. PRESIDENT:

The Speaker ruled that the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 2596 to be beyond scope & object of the bill. The House refuses to concur in said amendment and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate recede from its position on Substitute House Bill No. 2596 and pass the bill without the Senate amendment(s).

The President declared the question before the Senate to be motion by Senator Hargrove that the Senate recede from its position on Substitute House Bill No. 2596 and pass the bill without Senate amendment(s) by voice vote.

The motion by Senator Hargrove carried and the Senate receded from its position on Substitute House Bill No. 2596 and pass the bill without the Senate amendment(s).

MOTION

On motion of Senator Marr, Senators Brown and Prentice were excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2596 without the Senate amendment(s).

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2596, without the Senate amendment(s), and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators McCaslin and Prentice

SUBSTITUTE HOUSE BILL NO. 2596, without the Senate amendment(s), having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

March 5, 2010

MR. PRESIDENT:

The House passed ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6504 with the following amendment(s): 6504-S2.E AMH ENGR H5398.E

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 7.68.070 and 2009 c 38 s 1 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW except as provided in this section, provided that no more than fifty thousand dollars shall be paid per claim:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits

under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter(~~(= PROVIDED)~~), except that:

~~(a) Benefits for burial expenses shall not exceed ((the amount paid by the department in case of the death of a worker as provided in chapter 51.32 RCW in any claim: PROVIDED FURTHER, That if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;~~

~~(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;~~

~~(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;~~

~~(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;~~

~~(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.~~

~~No other benefits may be paid or payable under these circumstances)) five thousand dollars per claim; and~~

(b) An application for benefits relating to payment for burial expenses, pursuant to this subsection, must be received within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for burial, application for benefits must be received within twelve months of the date of the release of the remains for burial.

(5) The benefits established in RCW 51.32.060 for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to

payment contained in that section apply under this chapter(~~(= PROVIDED)~~), except that if a victim becomes permanently and totally disabled as a proximate result of the criminal act (~~(and was not gainfully employed at the time of the criminal act)~~), the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter, but shall not exceed seven thousand dollars per claim.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter(~~(= PROVIDED)~~), except that no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act (~~(= and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act)~~).

(8) The benefits established in RCW 51.32.095 for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter(~~(= PROVIDED)~~), except that benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

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(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

~~(13) ((Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.~~

~~(14))~~ Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

~~(15))~~ (14) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

~~(16))~~ (15) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act, except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medicaid reimbursement.

~~(17))~~ (16) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

~~(18))~~ (17) A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

~~(19))~~ (18) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060(4) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.

(19) A victim is not eligible for benefits under this act if such victim:

(a) Has been convicted of a felony offense within five years preceding the criminal act for which they are applying where the felony offense is a violent offense under RCW 9.94A.030 or a crime against persons under RCW 9.94A.411, or is convicted of such a felony offense after applying; and

(b) Has not completely satisfied all legal financial obligations owed prior to applying for benefits.

Sec. 2. RCW 7.68.085 and 2009 c 479 s 9 are each amended to read as follows:

(1) This section has no force or effect from the effective date of this section until July 1, 2015.

(2) The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or death. Payment for medical services in excess of the cap shall be made available to any innocent victim under the same conditions as other medical services and if the medical services are:

((1)) (a) Necessary for a previously accepted condition;

((2)) (b) Necessary to protect the victim's life or prevent deterioration of the victim's previously accepted condition; and

((3)) (c) Not available from an alternative source.

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services.

NEW SECTION. Sec. 3. A new section is added to chapter 7.68 RCW to read as follows:

The crime victims' compensation account is created in the custody of the state treasurer. Expenditures from the account may be used only for the crime victims' compensation program under this chapter. Only the director of the department 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. 4. RCW 9A.82.110 and 2009 c 479 s 11 are each amended to read as follows:

(1) In an action brought by the attorney general on behalf of the state under RCW 9A.82.100(1)(b)(i) in which the state prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act.

(2)(a) The county legislative authority may establish an antiprofitteering revolving fund to be administered by the county prosecuting attorney under the conditions and for the purposes provided by this subsection. Disbursements from the fund shall be on authorization of the county prosecuting attorney. No appropriation is required for disbursements.

(b) Any prosecution and investigation costs, including attorney's fees, recovered for the state by the county prosecuting attorney as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of criminal profiteering, whether by final judgment, settlement, or otherwise, shall be deposited, as directed by a court of competent jurisdiction, in the fund established by this subsection. In an action brought by a prosecuting attorney on behalf of the county under RCW 9A.82.100(1)(b)(i) in which the county prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act.

(c) The county legislative authority may prescribe a maximum level of moneys in the antiprofitteering revolving fund. Moneys exceeding the prescribed maximum shall be transferred to the county current expense fund.

(d) The moneys in the fund shall be used by the county prosecuting attorney for the investigation and prosecution of any offense, within the jurisdiction of the county prosecuting attorney, included in the definition of criminal profiteering, including civil enforcement.

(e) If a county has not established an antiprofitereing revolving fund, any payments or forfeitures ordered to the county under this chapter shall be deposited to the county current expense fund.

Sec. 5. RCW 72.09.111 and 2009 c 479 s 60 are each amended to read as follows:

(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the following times:

(i) The time of his or her release from confinement;

(ii) Prior to his or her release from confinement in order to secure approved housing; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) If funds are made available pursuant to (a)(ii) or (iii) of this subsection, the funds shall be made available to the inmate in an amount determined by the secretary.

(c) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the ~~((state general fund))~~ crime victims' compensation account, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for

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the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

Sec. 6. RCW 72.09.480 and 2009 c 479 s 61 are each amended to read as follows:

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

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

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

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the ~~((state general fund))~~ crime victims' compensation account provided in section 3 of this act;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order; and

(e) Twenty percent to the department to contribute to the cost of incarceration.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) of this section shall only apply after the child support obligation has been paid in full.

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

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the

department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action.

NEW SECTION. Sec. 7. A new section is added to chapter 7.68 RCW to read as follows:

(1) Within current funding levels, the department's crime victims' compensation program shall post on its public web site a report that shows the following items:

(a) The total amount of current funding available in the crime victims' compensation fund;

(b) The total amount of funding disbursed to victims in the previous thirty days; and

(c) The total amount paid in overhead and administrative costs in the previous thirty days.

(2) The information listed in subsection (1) of this section must be posted and maintained on the department's web site by July 1, 2010 and updated every thirty days thereafter.

NEW SECTION. Sec. 8. Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect April 1, 2010, for all claims of victims of criminal acts occurring after July 1, 1981.

NEW SECTION. Sec. 9. Sections 1 and 2 of this act expire July 1, 2015."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate refuse to concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 6504, insist on its position and ask the House to recede therefrom.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Hargrove that the Senate refuse to concur in

the House amendment(s) to Engrossed Second Substitute Senate Bill No. 6504, insist on its position and ask the House to recede therefrom.

The motion by Senator Hargrove carried and the Senate refused to concur in the House amendment(s) to Engrossed Second Substitute Senate Bill No. 6504, insist on its position and asked the House to recede therefrom by voice vote.

MOTION

At 1:55 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 3:36 p.m. by President Owen.

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SIGNED BY THE PRESIDENT

The President signed:

SECOND SUBSTITUTE HOUSE BILL 2016,
 SUBSTITUTE HOUSE BILL 2179,
 SUBSTITUTE HOUSE BILL 2402,
 SUBSTITUTE HOUSE BILL 2443,
 ENGROSSED SUBSTITUTE HOUSE BILL 2464,
 SUBSTITUTE HOUSE BILL 2466,
 SUBSTITUTE HOUSE BILL 2533,
 SUBSTITUTE HOUSE BILL 2534,
 ENGROSSED SUBSTITUTE HOUSE BILL 2538,
 SUBSTITUTE HOUSE BILL 2593,
 SECOND SUBSTITUTE HOUSE BILL 2603,
 HOUSE BILL 2625,
 SUBSTITUTE HOUSE BILL 2680,
 HOUSE BILL 2681,
 SUBSTITUTE HOUSE BILL 2717,
 HOUSE BILL 2748,
 ENGROSSED SUBSTITUTE HOUSE BILL 2752,
 SUBSTITUTE HOUSE BILL 2775,
 ENGROSSED SUBSTITUTE HOUSE BILL 2777,
 SUBSTITUTE HOUSE BILL 2801,
 ENGROSSED HOUSE BILL 2805,
 SUBSTITUTE HOUSE BILL 2841,
 SECOND SUBSTITUTE HOUSE BILL 2867,
 SUBSTITUTE HOUSE BILL 2939,
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL
 2961,
 HOUSE BILL 2973,
 ENGROSSED SUBSTITUTE HOUSE BILL 2986,
 HOUSE BILL 3007,
 SUBSTITUTE HOUSE BILL 3016,
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL
 3026,
 ENGROSSED SUBSTITUTE HOUSE BILL 3040,
 SUBSTITUTE HOUSE BILL 3105,
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL
 3141,
 ENGROSSED SUBSTITUTE HOUSE JOINT
 RESOLUTION 4220.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2745, by House Committee on Environmental Health (originally sponsored by Representatives Hudgins, Campbell and Uptegrove)

Concerning compliance with the environmental protection agency's renovation, repair, and painting rule in the lead-based paint program.

The measure was read the second time.

MOTION

On motion of Senator Rockefeller, the rules were suspended, Substitute House Bill No. 2745 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Rockefeller, Marr and Franklin spoke in favor of passage of the bill.

Senators Hargrove and Benton spoke against passage of the bill.

MOTION

On motion of Senator Brandland, Senators Roach and Zarelli were excused.

POINT OF INQUIRY

Senator Franklin: "Would Senator Rockefeller yield to a question? Thank you Senator. Under the provisions of the bill are volunteers required to be certified?"

Senator Rockefeller: "Mr. President, would be happy to respond. Let me begin by pointing out that the law of the state under which we took the delegation of authority from EPA requires that our program and rules be equal to but not in excess of federal requirements as set forth in the federal residential lead-based paint hazard reduction act. So, that's our base line. According to the federal rules with which we must be consistent these provisions apply only to persons who are compensated for renovating homes and child care facilities built before 1978. So, while the gentlemen who have been concerned don't see language in this bill that is not the issue. Because the language of our law must be consistent with and not an excess of the federal requirements that we can answer with confidence that no volunteer is required to be certified as a renovator so volunteers are free, Senator Franklin. Unless specifically authorized to be more stringent, our state program must continue to be consistent with those federal rules and regulations and we have not authorized our program to be more stringent."

Senator Marr again spoke in favor of passage of the bill.
 Senator Hargrove again spoke against passage of the bill.

Senators King, Schoesler and Becker spoke against passage of the bill.

Senators Gordon and Hobbs spoke in favor of passage of the bill.

POINT OF INQUIRY

Senator Roach: "Would Senator Rockefeller yield to a question? So, thank you for yielding. So, the question I have is if I understand this bill right and I've been over here trying to read some things here, listening and talking. If this bill passes then anyone who wants to be certified pays twenty-five dollars to be

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able to perform the service. If it doesn't pass it could be two hundred to three hundred dollars that the EPA program would impose on an individual in this state to do the same work. Correct?"

Senator Rockefeller: "Correct and they are still required to have that training because the federal rules are the rules to which we are confirming our state practices so the standards are going into affect on April. These standards were adopted in the last year of the prior federal administration under President Bush. These are not regarded as unfriendly to business at that time or I think they would not have been adopted. So, what we're having here is a bill which offers an easier way for our renovators who are compensated to carry out this work. Similar to the training that abatement contractors have today. People who are volunteers in abatement or in renovation currently do not have to get this training and they're not subject to the rules or the penalties."

Senator Roach: "So, if this bill passes the cost to an individual in Washington State is twenty-five dollars. If it doesn't, the cost would be two hundred?"

Senator Rockefeller: "For the training part of it, yes."

Senator Roach spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2745.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2745 and the bill passed the Senate by the following vote: Yeas, 31; Nays, 17; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Brandland, Carrell, Delvin, Hargrove, Hewitt, Holmquist, Honeyford, King, Morton, Parlette, Pflug, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Excused: Senator McCaslin

SUBSTITUTE HOUSE BILL NO. 2745, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3178, by House Committee on Ways & Means (originally sponsored by Representatives Carlyle, Anderson, Hunter, Rolfes, Eddy, Takko, Probst, Wallace, Maxwell, Van De Wege, Kelley, Green, Sullivan, Hudgins, Hope, Morrell, Springer, Ericks, Hunt, Goodman, Jacks and Finn)

Creating efficiencies in the use of technology in state government.

The measure was read the second time.

MOTION

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Senator Prentice moved that the following committee striking amendment by the Committee on Ways & Means be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 43.105 RCW to read as follows:

(1) The legislature finds that the provision of information technology in state government lacks strategic coordination, transparency, and meaningful enterprise-wide direction and oversight. It is no longer economically sustainable or technically feasible for state agencies to obtain and provide large-scale, commonly utilized information technology products and services on an individual, agency- by-agency basis without coordination. Instead, the state needs a strong, enterprise-based information technology strategy to ensure the public's needs are being met and the state is receiving the highest quality information technology products and services at the best price from public or private providers. Developing a strong enterprise-wide strategy also includes establishing clear lines of authority and accountability within state agencies so that those services unique to individual agencies receive the support required to effectively and efficiently provide services to citizens. To accomplish these objectives, the state needs to develop an open, transparent process for determining the total cost of ownership for the information technology products and services it provides, and to provide such information in an easily accessible, public fashion. It is in the state's interest to ensure that the wide range of disparate networks, systems, services, and structures across state government become more closely coordinated, organized, and structured. This type of coordinating effort is already underway in the area of higher education through the efforts of the higher education technology transformation task force and informally within other areas. When more transparent technical and financial information is readily available, the state can make sound policy decisions about what information technology services should be provided centrally on a shared services basis, and what products and services may be best suited for either contracting with private providers or for maintenance at the agency level. Furthermore, if attractive pricing models and service level agreements are developed for enterprise-based information technology services, the legislative and judicial branches will have an incentive to participate in those services as well.

(2) It is the intent of the legislature to organize, consolidate, and, where appropriate, contract with private providers for technology systems and resources in a strategic fashion that is based upon sound, objective, nonpolitical, and independent technical and financial criteria. The state needs to develop a clear, enterprise-based statewide strategy for information technology to ensure that there is transparency and accountability regarding how information technology resources are being allocated, how decisions are being made, and who is accountable for on-time, on-budget delivery.

"NEW SECTION. Sec. 2. A new section is added to chapter 43.105 RCW to read as follows:

(1) State agencies that are purchasing wireless devices or services must make such purchases through the state master contract, unless the state agency provides to the office of financial management evidence that the state agency is securing its wireless devices or services from another source for a lower cost than through participation in the state master contract.

(2) For the purposes of this section, "state agency" means any office, department, board, commission, or other unit of state government, but does not include a unit of state government headed by a statewide elected official, an institution of higher education as defined in RCW 28B.10.016, the higher education coordinating

board, the state board for community and technical colleges, or agencies of the legislative or judicial branches of state government.

Sec. 3. RCW 43.105.190 and 2005 c 319 s 111 are each amended to read as follows:

(1) The department, with the approval of the board, shall establish standards and policies governing the planning, implementation, and evaluation of major information technology projects, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or statewide or regional providers of K-12 education information technology services. The standards and policies shall:

(a) Establish criteria to identify projects which are subject to this section. Such criteria shall include, but not be limited to, significant anticipated cost, complexity, or statewide significance of the project; and

(b) Establish a model process and procedures which agencies shall follow in developing and implementing projects within their information technology portfolios. Agencies may propose, for approval by the department, a process and procedures unique to the agency. The department may accept or require modification of such agency proposals or the department may reject such agency proposals and require use of the model process and procedures established under this subsection. Any process and procedures developed under this subsection shall require (i) distinct and identifiable phases upon which funding may be based, (ii) user validation of products through system demonstrations and testing of prototypes and deliverables, and (iii) other elements identified by the board.

The director may terminate a major project if the director determines that the project is not meeting or is not expected to meet anticipated performance standards.

(2) The office of financial management shall establish policies and standards consistent with portfolio-based information technology management to govern the funding of projects developed under this section. The policies and standards shall provide for:

(a) Funding of a project under terms and conditions mutually agreed to by the director, the director of financial management, and the head of the agency proposing the project. However, the office of financial management may require incremental funding of a project on a phase-by-phase basis whereby funds for a given phase of a project may be released only when the office of financial management determines, with the advice of the department, that the previous phase is satisfactorily completed;

(b) Acceptance testing of products to assure that products perform satisfactorily before they are accepted and final payment is made; and

(c) Other elements deemed necessary by the office of financial management.

(3)(a) The department shall evaluate projects based on the demonstrated business needs and benefits; cost; technology scope and feasibility; impact on the agency's information technology portfolio and on the statewide infrastructure; and final project implementation plan based upon available funding.

(b) Copies of project evaluations conducted under this subsection shall be submitted to the office of financial management and the chairs, ranking minority members, and staff coordinators of the appropriations committees of the senate and house of representatives.

(c) If there are projects that receive funding from a transportation fund or account, copies of those projects' evaluations conducted under this subsection must be submitted to the chairs and ranking minority members of the transportation committees of the senate and the house of representatives.

(4) For the 2009-2011 biennium, the following limitations are established upon information technology procurement:

(a) Except as provided in (c) of this subsection, state agencies are not permitted to purchase or implement new information technology projects without securing prior authorization from the office of financial management. The office of financial management may only approve information technology projects that contribute towards an enterprise strategy or meet a critical, localized need of the requesting agency.

(b) Except as provided in (c) of this subsection, state agencies are not permitted to purchase servers, virtualization software, data storage, or related software through their operational funds or through a separate information technology budget item without securing prior authorization from the office of financial management. The office of financial management shall grant approval only if the purchase is consistent with the state's overall migration strategy to the state data center and critical to the operation of the agency.

(c) State agencies may purchase new information technology projects or servers without securing prior authorization from the office of financial management if the purchase by the agency is needed to address an immediate and compelling threat to public safety.

(d) For the purposes of this subsection (4), "state agency" means any office, department, board, commission, or other unit of state government, but does not include a unit of state government headed by a statewide elected official, an institution of higher education as defined in RCW 28B.10.016, the higher education coordinating board, the state board for community and technical colleges, or agencies of the legislative or judicial branches of state government.

NEW SECTION. Sec. 4. A new section is added to chapter 43.88 RCW to read as follows:

(1) As part of the biennial budget process, the office of financial management shall collect from agencies, and agencies shall provide, information to produce reports, summaries, and budget detail sufficient to allow review, analysis, and documentation of all current and proposed expenditures for information technology by state agencies. Information technology budget detail must be included as part of the budget submittal documentation required pursuant to RCW 43.88.030.

(2) The office of financial management must collect, and present as part of the biennial budget documentation, information for all existing information technology projects as defined by information services board policy. The office of financial management must work with the department of information services to maximize the ability to draw this information from the information technology portfolio management data collected by the department of information services pursuant to RCW 43.105.170. Connecting project information collected through the portfolio management process with financial data developed under subsection (1) of this section provides transparency regarding expenditure data for existing technology projects.

(3) The biennial budget documentation submitted by the office of financial management pursuant to RCW 43.88.030 must include an information technology plan identifying proposed large information technology projects. This plan must be presented using a method similar to the capital budget, identifying project costs through stages of the project and across fiscal periods and biennia from project initiation to implementation. This information must be submitted electronically, in a format to be determined by the office of financial management and the legislative evaluation and accountability program committee.

(4) The office of financial management shall also institute a method of accounting for information technology-related expenditures, including creating common definitions for what constitutes an information technology investment.

Sec. 5. RCW 43.88.560 and 1992 c 20 s 7 are each amended to read as follows:

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The director of financial management shall establish policies and standards governing the funding of major information technology projects as required under RCW 43.105.190(2). The director of financial management shall also direct the collection of additional information on information technology projects and submit an information technology plan as required under section 4 of this act.

Sec. 6. RCW 43.105.041 and 2009 c 486 s 13 are each amended to read as follows:

(1) The board shall have the following powers and duties related to information services:

(a) To develop standards and procedures governing the acquisition and disposition of equipment, proprietary software and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data. The board shall coordinate with the office of financial management to develop contracting standards for information technology acquisition and purchased services and must work with state agencies to ensure deployment of standardized contracts;

(b) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200, except that the board, the department, and state agencies, as delegated, must post notices of technology procurement bids on the state's common vendor registration and bid notification system. This subsection (1)(b) does not apply to the legislative branch;

(c) To develop statewide or interagency technical policies, standards, and procedures;

(d) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services, and to assure the cost-effective development and incremental implementation of a statewide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(e) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

(f) To develop and implement a process for the resolution of appeals by:

(i) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(ii) A customer agency concerning the provision of services by the department or by other state agency providers;

(g) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(i) Planning, management, control, and use of information services;

(ii) Training and education; and

(iii) Project management;

(h) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director;

(i) To review and approve that portion of the (~~department's~~) budget (~~requests~~) that (~~provides for~~) may provide independent, technical staff support to the board; and

(j) To develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of products and services by state agencies and institutions from Washington small businesses to the maximum extent practicable and consistent with international trade agreement commitments.

(2) Statewide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The board shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems, including wireless communications systems. Local governments are strongly encouraged to follow the standards established by the board; and

(b) Require agencies to consider electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the board is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

(3)(a) The board, in consultation with the K-20 board, has the duty to govern, operate, and oversee the technical design, implementation, and operation of the K-20 network including, but not limited to, the following duties: Establishment and implementation of K-20 network technical policy, including technical standards and conditions of use; review and approval of network design; procurement of shared network services and equipment; and resolving user/provider disputes concerning technical matters. The board shall delegate general operational and technical oversight to the K-20 network technical steering committee as appropriate.

(b) The board has the authority to adopt rules under chapter 34.05 RCW to implement the provisions regarding the technical operations and conditions of use of the K-20 network.

(4) The board shall review all information technology efforts under its purview based on independent technical and financial information, regardless of whether the projects or services are being provided by public or private providers. This review must be conducted by independent, technical staff support, subject to funds appropriated for this specific purpose.

(5) In reviewing these efforts, the board, in consultation with the office of financial management, shall review state agency information technology budgets. The board may acquire project management assistance to assist in its efforts under this act.

Sec. 7. RCW 43.105.180 and 1999 c 80 s 11 are each amended to read as follows:

(Upon request of the office of financial management,) (1) The department, in coordination with the information services board and the office of financial management, shall evaluate agency budget requests for major information technology projects identified under RCW 43.105.190, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or statewide or regional providers of K-12 education information technology services. The department shall submit recommendations for funding all or part of such requests to the office of financial management and to the chairs, ranking minority members, and staff coordinators of the appropriations committees of

the senate and house of representatives. The department shall also submit recommendations regarding consolidation of similar proposals or other efficiencies it finds in reviewing proposals.

(2) The department, with the advice and approval of the office of financial management and the information services board, shall establish criteria, consistent with portfolio-based information technology management, for the evaluation of agency budget requests under this section. These budget requests shall be made in the context of an agency's information technology portfolio; technology initiatives underlying budget requests are subject to board review. Criteria shall include, but not be limited to: Feasibility of the proposed projects, consistency with the state strategic information technology plan, consistency with information technology portfolios, appropriate provision for public electronic access to information, evidence of business process streamlining and gathering of business and technical requirements, and services, costs, and benefits.

(3) For the purposes of this section, "state agency" includes every state office, department, division, bureau, board, commission, or other state agency, including offices headed by a statewide elected official.

NEW SECTION. Sec. 8. A new section is added to chapter 2.68 RCW to read as follows:

The administrative office of the courts, under the direction of the judicial information system committee, shall:

(1) Develop a judicial information system information technology portfolio consistent with the provisions of RCW 43.105.172;

(2) Participate in the development of an enterprise-based statewide information technology strategy as defined in section 11 of this act;

(3) Ensure the judicial information system information technology portfolio is organized and structured to clearly indicate participation in and use of enterprise-wide information technology strategies;

(4) As part of the biennial budget process, submit the judicial information system information technology portfolio to the chair and ranking member of the ways and means committees of the house of representatives and the senate, the office of financial management, and the department of information services.

NEW SECTION. Sec. 9. A new section is added to chapter 44.68 RCW to read as follows:

The legislative service center, under the direction of the joint legislative systems committee and the joint legislative systems administrative committee, shall:

(1) Develop a legislative information technology portfolio consistent with the provisions of RCW 43.105.172;

(2) Participate in the development of an enterprise-based statewide information technology strategy as defined in section 11 of this act;

(3) Ensure the legislative information technology portfolio is organized and structured to clearly indicate participation in and use of enterprise-wide information technology strategies;

(4) As part of the biennial budget process, submit the legislative information technology portfolio to the chair and ranking member of the ways and means committees of the house of representatives and the senate, the office of financial management, and the department of information services.

Sec. 10. RCW 43.105.160 and 2005 c 319 s 110 are each amended to read as follows:

(1) The department shall prepare a state strategic information technology plan which shall establish a statewide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services. The plan shall be developed in accordance with the standards and policies established by the board and shall be

submitted to the board for review, modification as necessary, and approval. The department shall seek the advice of the board in the development of this plan.

The plan approved under this section shall be updated as necessary and submitted to the governor and the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives.

(2) The department shall prepare a biennial state performance report on information technology based on agency performance reports required under RCW 43.105.170 and other information deemed appropriate by the department. The report shall include, but not be limited to:

(a) An analysis, based upon agency portfolios, of the state's information technology infrastructure, including its value, condition, and capacity;

(b) An evaluation of performance relating to information technology;

(c) An assessment of progress made toward implementing the state strategic information technology plan, including progress toward electronic access to public information and enabling citizens to have two-way access to public records, information, and services;

(d) An analysis of the success or failure, feasibility, progress, costs, and timeliness of implementation of major information technology projects under RCW 43.105.190. At a minimum, the portion of the report regarding major technology projects must include:

(i) Final total cost of ownership budget data for the entire life-cycle of the project, including capital and operational costs, broken down by staffing costs, contracted service, hardware purchase or lease, software purchase or lease, travel, and training. The original budget must also be shown for comparison;

(ii) The original proposed project schedule and the final actual project schedule;

(iii) Data regarding progress towards meeting the original goals and performance measures of the project, particularly as it relates to operating budget savings;

(iv) Discussion of lessons learned on the project, performance of any contractors used, and reasons for project delays or cost increases; and

((e)) (v) Identification of benefits, cost avoidance, and cost savings generated by major information technology projects developed under RCW 43.105.190; and

((f)) (e) An inventory of state information services, equipment, and proprietary software.

Copies of the report shall be distributed biennially to the governor and the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives. The major technology section of the report must examine major information technology projects completed in the previous biennium to determine the performance of the implementing agency, cost and value effectiveness, and timeliness and other performance metrics necessary to assess the quality and value of the investment. The report must also examine projects two years after completion for progress toward meeting performance goals and operating budget savings. The first report is due December 15, 2011, and every two years thereafter.

NEW SECTION. Sec. 11. A new section is added to chapter 43.105 RCW to read as follows:

(1) The board, in consultation with the department and the office of financial management, shall develop an enterprise-based strategy for information technology in state government informed by information technology expenditure information collected from state agencies pursuant to section 4 of this act.

(2) In developing an enterprise-based strategy for the state, the board is encouraged to consider the following strategies as possible opportunities for achieving greater efficiency:

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(a) Developing personal computer replacement policies for the state, with consideration given to alternative models of personal computer usage for state government use, such as thin client, software as a service, browser-based functionality, mobile computing, and other models that are less dependent upon traditional computing;

(b) Pursuing shared services initiatives across functional areas, which may include services such as e-mail, telephony, and data storage;

(c) Pursuing pilot programs, such as a pilot to demonstrate the value of application management services, to identify opportunities to achieve operational efficiencies;

(d) Developing data storage policies and record retention requirements and schedules for state agencies, in consultation with the office of the secretary of state, the state archivist, and the state records committee, where appropriate;

(e) Reviewing existing software maintenance contracts to identify opportunities to renegotiate the price of those contracts or the level of service; and

(f) Partnering with private providers for commonly utilized information technology products and services.

(3) The legislative and judicial branches are encouraged to coordinate with, and participate in, shared services initiatives, pilot programs, and development of the enterprise-based strategy, where appropriate.

NEW SECTION. Sec. 12. (1) The office of financial management, with the assistance of the department of information services, must identify areas of potential savings that will achieve the savings identified in the omnibus appropriations act. These areas shall include, but not be limited to, wireless service, telephony, desktop computers, electronic mail services, and data storage.

(2) The office of financial management shall work with the appropriate state agencies, including the department of information services, to generate savings that arise pursuant to this act from the improved acquisition and delivery of information technology products and services. To accomplish this objective, state agencies must provide timely, accurate total cost of ownership data to the office of financial management upon request regarding information technology products and services. The savings must be at least equal to those specified in the omnibus appropriations act. The office of financial management shall reduce agency allotments by the amounts specified in the omnibus appropriations act to reflect these savings. The allotment reductions shall be placed in unallotted status and remain unexpended.

(3) For the purposes of this section, "state agency" means any office, department, board, commission, or other unit of state government, but does not include a unit of state government headed by a statewide elected official, an institution of higher education as defined in RCW 28B.10.016, the higher education coordinating board, the state board for community and technical colleges, or agencies of the legislative or judicial branches of state government.

(4) This section expires June 30, 2011.

NEW SECTION. Sec. 13. A new section is added to chapter 43.105 RCW to read as follows:

(1) The department, in collaboration with state agencies, shall conduct an inventory from existing data sets of information technology assets owned or leased by state agencies. This inventory must be used to inform the development of a state information technology asset management process. Prior to implementation of any state information technology asset management process, the department must submit its recommended approach, including an estimate of the associated implementation costs, to the board for approval.

(2) For the purposes of this section, "state agency" includes every state office, department, division, bureau, board, commission,

or other state agency, including offices headed by a statewide elected official, and offices in the legislative and judicial branches of state government, notwithstanding the provisions of RCW 44.68.105.

NEW SECTION. Sec. 14. (1) The office of financial management, in consultation with the department of information services and the information services board, shall develop and execute a pilot program to contract with one or more private providers for the delivery, support, maintenance, and operation of information technology through application managed services or other similar programs across one or more functional areas of information technology, or for the information technology needs of one or more state agencies. In selecting a private provider for the pilot program, the office of financial management must engage in a competitive bid process or request for proposals process.

(2) The objective of the pilot program will be to assess: (a) Each agency's information technology application portfolio; (b) opportunities to use best practices and tools; and (c) whether the agency should proceed with application managed services or other similar programs based on the results of the assessment.

(3) The department of information services and the office of financial management shall prepare a report of the findings of the pilot assessments by September 1, 2010, and a final report of the pilot results by June 30, 2011. The final report must include the following: Identification of short and long-term costs, risks, benefits, and other organizational impacts of implementing application managed services or other similar programs within the pilot agencies. The final report must also identify opportunities for other state agencies to benefit from application managed services or other similar programs. The results of the pilot program must be provided to the information services board, the governor, the senate committee on ways and means, and the house of representatives committee on ways and means.

NEW SECTION. Sec. 15. The department of information services shall, by November 1, 2010, report on the efforts to develop a centralized information project management office pursuant to section 142, chapter 522, Laws of 2007. The report shall address the current status of the effort, lessons learned, and recommended changes to the program.

NEW SECTION. Sec. 16. (1) The office of financial management shall contract with an independent consultant to:

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

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

(2) The analysis must consist of, at a minimum, an assessment of the following issues:

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

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

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

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

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

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

NEW SECTION. Sec. 17. (1) The department of information services and the office of financial management shall review existing statutes, procedures, data, and organizational structures to identify opportunities to increase efficiency, customer service, and transparency in information technology. This effort shall include:

(a) Identifying and addressing financial data needed to comprehensively evaluate information technology spending from an enterprise perspective;

(b) A review of best practices in information technology governance, including private sector practices and lessons learned from other states; and

(c) A review of existing statutes regarding information technology governance, standards, and financing to identify inconsistencies between current law and best practices.

(2) The department of information services and the office of financial management shall report findings and recommendations to the governor and the appropriate committees of the legislature by December 1, 2010.

NEW SECTION. Sec. 18. RCW 43.105.017 (Legislative intent) and 1992 c 20 s 6, 1990 c 208 s 2, & 1987 c 504 s 2 are each repealed.

NEW SECTION. Sec. 19. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2010, in the omnibus appropriations act, this act is null and void."

Senator Prentice spoke in favor of adoption of the committee striking amendment.

MOTION

Senator Fraser moved that the following amendment by Senators Fraser and Swecker to the committee striking amendment be adopted.

On page 2 of the striking amendment, after line 31, strike all of section 3.

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

Senators Fraser, Swecker and Prentice spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Fraser and Swecker on page 2, after line 31 to the committee striking amendment to Engrossed Substitute House Bill No. 3178.

The motion by Senator Fraser carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Marr moved that the following amendment by Senator Marr and others to the committee striking amendment be adopted.

On page 5, after line 7, insert the following:

"(5) This section does not apply to the department of transportation and the department of licensing."

WITHDRAWAL OF AMENDMENT

On motion of Senator Marr, the amendment by Senator Marr and others on page 5, line 7 to the committee striking amendment to Engrossed Substitute House Bill No. 3178 was withdrawn.

MOTION

Senator Marr moved that the following amendment by Senator Marr and others to the committee striking amendment be adopted.

On page 5, after line 22, insert the following:

"(5) This section does not apply to the department of transportation and the department of licensing."

WITHDRAWAL OF AMENDMENT

On motion of Senator Marr, the amendment by Senator Marr and others on page 5, after line 22 to the committee striking amendment to Engrossed Substitute House Bill No. 3178 was withdrawn.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Engrossed Substitute House Bill No. 3178.

The motion by Senator Prentice carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 2 of the title, after "government;" strike the remainder of the title and insert "amending RCW 43.105.190, 43.88.560, 43.105.041, 43.105.180, and 43.105.160; adding new sections to chapter 43.105 RCW; adding a new section to chapter 43.88 RCW; adding a new section to chapter 2.68 RCW; adding a new section to chapter 44.68 RCW; creating new sections; repealing RCW 43.105.017; and providing an expiration date."

On page 17, line 5 of the title amendment, strike "43.105.190".

MOTION

On motion of Senator Prentice, the rules were suspended, Engrossed Substitute House Bill No. 3178 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

MOTION

On motion of Senator Marr, Senators Brown and Hargrove were excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 3178 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 3178 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Hargrove and McCaslin

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ENGROSSED SUBSTITUTE HOUSE BILL NO. 3178 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6364, by Senators Fraser, Brandland, Prentice and Zarelli

Concerning the capital budget.

MOTION

On motion of Senator Fraser, Substitute Senate Bill No. 6364 was substituted for Senate Bill No. 6364 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Fraser moved that the following amendment by Senator Fraser and Brandland be adopted.

On page 65, line 12, strike "\$6,705,000" and insert "\$6,479,000"

On page 65, line 14, strike "\$6,479,000" and insert "\$6,705,000"

Senator Fraser spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Fraser and Brandland on page 65, line 12 to Substitute Senate Bill No. 6364.

The motion by Senator Fraser carried and the amendment was adopted by voice vote.

MOTION

Senator Fraser moved that the following amendment by Senators Prentice and Fraser be adopted.

On page 14, on line 28, delete all material through line 30

Renumber the subsections accordingly.

Senator Fraser spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Prentice and Fraser on page 14, line 28 to Substitute Senate Bill No. 6364.

The motion by Senator Fraser carried and the amendment was adopted by voice vote.

MOTION

Senator Fraser moved that the following amendment by Senators Fraser and Brandland be adopted.

On page 15, on line 19, delete all material through line 22 on page 19.

On page 21, on line 18, delete all material through line 32 on page 23.

Renumber the sections accordingly.

Senator Fraser spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Fraser and Brandland on page 15, line 19 to Substitute Senate Bill No. 6364.

The motion by Senator Fraser carried and the amendment was adopted by voice vote.

MOTION

Senator Fraser moved that the following amendment by Senators Fraser and Brandland be adopted.

On page 29, after line 12, strike all material through line 32, and insert the following:

"(2) \$1,000,000 of the reappropriation is provided solely for the Chehalis basin flood control authority or other authorized local government groups to develop governance agreements for development of flood hazard mitigation measures throughout the basin. The agreements must be executed by July 1, 2011.

(3) \$1,700,000 of the reappropriation is provided solely for the Chehalis basin flood control authority to administer studies for development of basin-wide flood hazard mitigation measures, provided that any expenditures from the reappropriation for studies, plans, or investigations of large scale retention structures shall be limited to fifty percent of the total cost for such studies, plans, or investigations.

(4) \$200,000 of the reappropriations is provided solely for an early flood warning system.

(5) It is the intent of the legislature to fulfill the commitment of section 101, chapter 179, Laws of 2008 and chapter 180, Laws of 2008, by appropriating funds when the federal match requirement is needed."

On page 29, on line 35, strike "\$3,560,000" and insert "\$4,540,000"

On page 30, on line 3, strike "\$42,990,000" and insert "\$42,010,000"

Senator Fraser spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Fraser and Brandland on page 29, after line 12 to Substitute Senate Bill No. 6364.

The motion by Senator Fraser carried and the amendment was adopted by voice vote.

MOTION

Senator Fraser moved that the following amendment by Senator Fraser and Brandland be adopted.

On page 44, line 15, decrease the State Toxics Control Account--State appropriation by \$511,000.

Adjust the totals accordingly.

Senator Fraser spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Fraser and Brandland on page 44, line 15 to Substitute Senate Bill No. 6364.

The motion by Senator Fraser carried and the amendment was adopted by voice vote.

MOTION

Senator Fraser moved that the following amendment by Senator Fraser and others be adopted.

On page 61, on line 2, delete "Forest Biomass" and insert "Forest Hazard Reduction and Biomass Equipment"

On page 61, on line 5, delete "The appropriation" insert "(1) The natural resource equipment account appropriation"

On page 61, after line 20, insert the following:

"(2) The state building construction account--state appropriation is provided solely for forest improvement treatments on forest lands of eastern Washington with the five highest priority fire and disease hazards in Stevens, Ferry, Lincoln, Pend Oreille, Okanogan, and Spokane counties. Forest treatments on private lands funded by this appropriation require an agreement with the property owner that

includes a commitment to maintain the improvements to forest health.

On page 61, after line 22, insert the following:

"State Building Construction Account--State. . . \$4,021,000"

Insert a subtotal and adjust the total accordingly

Senator Fraser spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Fraser and others on page 61, line 2 to Substitute Senate Bill No. 6364.

The motion by Senator Fraser carried and the amendment was adopted by voice vote.

MOTION

On motion of Senator Fraser, the rules were suspended, Engrossed Substitute Senate Bill No. 6364 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fraser and Morton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6364.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6364 and the bill passed the Senate by the following vote: Yeas, 32; Nays, 16; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brandland, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin and Tom

Voting nay: Senators Becker, Benton, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, Morton, Parlette, Pflug, Roach, Schoesler, Stevens, Swecker and Zarelli

Excused: Senator McCaslin

ENGROSSED SUBSTITUTE SENATE BILL NO. 6364, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6675, by Senators Murray, Pflug, Shin, Kastama, Kohl-Welles and Kilmer

Creating the Washington global health technologies and product development competitiveness program and allowing certain tax credits for program contributions.

MOTIONS

On motion of Senator Kastama, Second Substitute Senate Bill No. 6675 was substituted for Senate Bill No. 6675 and the second substitute bill was placed on the second reading and read the second time.

On motion of Senator Kastama, the rules were suspended, Second Substitute Senate Bill No. 6675 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kastama and Kohl-Welles spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 6675.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 6675 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 1; Absent, 1; Excused, 1.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Oemig

Absent: Senator Hewitt

Excused: Senator McCaslin

SECOND SUBSTITUTE SENATE BILL NO. 6675, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6712, by Senators Hobbs, Shin and Kilmer

Extending expiring tax incentives for certain clean alternative fuel vehicles, producers of certain biofuels, and federal aviation regulation part 145 certificated repair stations.

MOTIONS

On motion of Senator Hobbs, Substitute Senate Bill No. 6712 was substituted for Senate Bill No. 6712 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Hobbs, the rules were suspended, Substitute Senate Bill No. 6712 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hobbs spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6712.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6712 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator McCaslin

SUBSTITUTE SENATE BILL NO. 6712, having received the constitutional majority, was declared passed. There being no

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objection, the title of the bill was ordered to stand as the title of the act.

PERSONAL PRIVILEGE

Senator Brandland: "I rise before the body to say goodbye. I'm not coming back. I've been thinking about this for months. My wife and I have kicked this around and I have been on again off again and I decided about two weekends ago as I was sitting in my front room watching the sun come up over Mt. Baker. I decided I'm not coming back. I could not do that without coming to this body and saying thank you. I have voted with you. I have voted against you. I have made so many friends here. I do leave with a heavy heart. I do love this job but my heart's in Bellingham and I want to go back there. So, thank you very much for your friendship and your kindness and I wish you luck in the future."

REMARKS BY THE PRESIDENT

President Owen: "Senator Brandland, you sure, if we didn't give you two first round draft picks or something, we couldn't get you to change your mind?"

PERSONAL PRIVILEGE

Senator Hewitt: "Thank you Mr. President. Resignation not accepted! I'm going to be sad to lose Dale. He's caused me a lot of heartaches in my caucus but I still love the guy regardless. He's what I would call a true statesman and a gentleman. I mean you never know what, whether Dale has something up his sleeve or not because he comes to you and tells you just like it is. If everybody operated that way down here this would be a tremendous, tremendous place, it would be a better place to be. So, I got to tell you my friend, I'm going to, seriously going to miss you. You have become a very good friend of mine for the last eight years and I tried like hell to talk him out of this. You can't believe how hard I've tried but it's a decision he has to make and I think he has his priorities squared away. His heart is in the right spot and wish you well my friend."

PERSONAL PRIVILEGE

Senator Murray: "Well, speaking for side of the aisle I've enjoyed working with you tremendously on a variety of issues and Senator Brandland, I particularly have admired your integrity and your courage. So, from this side of the aisle the best of luck in the days and years ahead."

PERSONAL PRIVILEGE

Senator Hargrove: "Thank you Mr. President. Well, Dale's been on my committee for a number of years and it's really interesting because our committee passes almost everything unanimously out of our committee. One thing, in all seriousness I am going to miss is that law enforcement perspective as we look at human services and correction issues. It has been invaluable to have that perspective on our committee as we have sorted through sex offender issues, through correction issues, through the prison reform stuff that Senator Carrell worked on. I mean it's just, so many times the experience Dale brought from being an ex-sheriff. He has inside knowledge about stuff that we just can't grasp without having that experience here. I am going to repeat one little story that I thought it might be humorous to people, that is, I can remember, I think the first year he was on my committee. You know I run a pretty tight ship in executive session and he

actually started to speak on an amendment and then he looked up at me and said, 'Oh, you didn't want me to talk did you' and we got along really good because we worked together. He's never surprised me with anything. We've always known what was going to go on and worked things out and I think it's been a real pleasure Dale but we're really, really, really going to miss that experience on all the issues we've had to deal with in our committee and hope you won't be a stranger."

PERSONAL PRIVILEGE

Senator Fraser: "Thank you Mr. President. I too would like to say thank you, once again, second time in about fifteen minutes to Senator Brandland. It's just been a total pleasure to work with him. I think we've worked on, I think four capital budgets together now and I would agree with Senator Hargrove that Senator Brandland's experience in law enforcement has been very helpful in working through projects on the capital budget and he and I have a lot in common. He's a former County Sheriff, I'm a former County Commissioner so it's really fun for us sometimes to sit there and think about you know we were in county government, now we're here and it's been great. Senator Brandland's always thoughtful, pleasant, informed and a total pleasure to work with and I guess this will be our last capital budget together but I hope we will be working on other things together. Thank you very much."

PERSONAL PRIVILEGE

Senator Stevens: "Thank you Mr. President. I too rise with a heavy heart and as the ranking member on the committee that Senator Hargrove was speaking of, the Human Services and Corrections Committee. It has been a great opportunity to work together to be able to come together on issues that were very diverse and varied and to have the kind of input that we've had. I will never forget the time that we were in the majority, we were in that other building when we were temporarily out of this building and I can remember we were stalling for time. I was sitting beside Senator Brandland and I, he made a comment about a bill as a freshman I took advantage of the opportunity and I stood and asked him if he would yield to a question and he agreed. I said 'Can you tell me the difference between the striker and the bill, the original bill?' He turned and looked at me and said, 'I don't have a clue and why are doing this to me?' So, I will through that back at you, 'Why are you doing this to us?' I wish you well in your continued retirement and to you and your wife, the very best."

PERSONAL PRIVILEGE

Senator Kline: "Mr. President, I know I'm one of forty-eight guys around here, guys and gals, that are going to miss you. Dale, you're one of the reasons why bills, and we all have probably noticed this, at least in my committee and, I know, in Human Services and Corrections have been going out much more unanimously, much more well worked, with a great deal of attention and a lot of hand shaking across the aisle. The reason I think in large part is your ability to exercise what we liberals called empathy. That is the ability to see something not only from your own point of view and the people you know but from the point of view of others and law enforcement, yes, but also the people that I know that I represent, the people who may be doing some crazy stuff and sometimes maybe not always playing by the rules as we know they should. To exercise some empathy and to not be simple the sheriff as I hope I can and at some point and I

know that all of us try. That takes a lot and I certainly appreciate it. I had an experience, a couple, I think it's two or three years ago, of going up to Bellingham to work with the Whatcom County Sheriff's, they were hosting a task force on gang activity and the sheriff's department in Whatcom County is Dale Brandland fans. He's there, not just their boss, their friend. That was pretty clear that they all knew and loved Dale as we do. Dale, I'm going to miss you. Come back sometime and see us. Thank you."

PERSONAL PRIVILEGE

Senator Kastama: "Thank you Mr. President, I didn't plan on speaking on this today. I really didn't but I do want to say this. When I first came to the chamber I think I learned the importance of being a Senator from Senator Snyder. He taught me very clearly that, in fact, you're no longer the individual Jim Kastama, whatever your name happens to be. You are a Senator and you behave as a Senator. I want to say that you will be missed in this body but I want you to know that you are truly a Senator. As a Senator very few people have gone through what we have gone through, have had to make the difficult decisions that we've had to make, have had to balance all the difference interest groups like we've had to do, had to make decisions that really impact lives in Washington State and determine allocations of millions if not billions of dollars. Very few people had to make those decisions and I want you to know that you, again, will always be welcome here as a Senator and you've been a great part of the Senate. Thank you for that."

PERSONAL PRIVILEGE

Senator Parlette: "Well, I got to tell you, isn't that what he often says too? I didn't plan on speaking but I got to tell you. Well, I have to tell you that we are going to really miss Dale for a variety of reasons but he's part of our leadership team. He is our Whip and you know what the job is, to bring everybody into caucus. He sits right next to me in caucus as I chair the meeting and he keeps track of who wants to take turns speaking because he writes it down. But as you know, Dale is so often out there working on issues, bringing people together that sometimes, I mean at least every other time we go into caucus, we have to go look for the Whip because he's out there trying to solve a problem and bring people together so we can come to an agreement on what we're voting on. And that's the truth. That happens ninety percent of the time. Dale, we're going to miss you. You are a statesman. A prince of a man. We'll miss you."

PERSONAL PRIVILEGE

Senator Franklin: "Thank you Mr. President. Well, Senator Brandland, I have dubbed you the even-spirited guy. You have been a mediator, a moderator bringing people together, solving problems and a point of view law enforcement officer. When I come out of my office and you are there, it's 'Hello Rosa. Good morning Senator.' You really have served well. You are going to be missed for the person you are, for what you have brought to this august body and for your even temperament-except once. When I saw you sort of flustered, then somebody said something that did not, you were not, did not meet your principles and that only one time. But when we have legislators who serve, this is not an easy job, we get hit left and right. You get hit if you do the right thing. You get hit if you do the wrong thing-what they consider the wrong thing. You have looked at both sides and tried to come up with solutions to help all of us. When I come to Whatcom County, I'm going to look you up. Thank you. You've

done a good job. You are going to be missed. Thank you for your service."

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2759, by House Committee on Ways & Means (originally sponsored by Representatives Maxwell, Anderson, Roberts, White, Goodman, Clibborn, Kenney, Hunter, Morrell and Haigh)

Adjusting local school finance related to nonresident students enrolled in online learning.

The measure was read the second time.

MOTION

Senator McAuliffe moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. While the legislature supports online learning, the legislature finds that there are unintended financial consequences for taxpayers, both locally and statewide, when significant numbers of nonresident students enroll in a school district for purposes of enrolling in an online school program. Therefore, the legislature intends to adjust finance policy related to voter-approved excess levies and a district's qualification for local effort enhancement funds to eliminate these unintended consequences.

Sec. 2. RCW 84.52.0531 and 2009 c 4 s 908 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b) and (c) of this subsection minus (d) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (5) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) For districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (5) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

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(d) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection. In addition, for excess levies for collection in calendar year 2011 and thereafter, a district's levy base shall not include state or federal allocations attributable to nonresident students enrolled in the district in an online school program as defined under RCW 28A.250.010 based on an interdistrict agreement or under the provisions of RCW 28A.225.220 and 28A.225.225.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through 2011, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a) The difference between the allocation the district would have received in the current school year had RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current school year pursuant to RCW 84.52.068. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(a) by any additional per student allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004; and

(b) The difference between the allocations the district would have received the prior school year had RCW 28A.400.205 not been amended by chapter 20, Laws of 2003 1st sp. sess. and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(b) by any additional salary increase allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004.

(5) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection (6) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(6) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(7) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(8) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(11) For calendar year 2009, the office of the superintendent of public instruction shall recalculate school district levy authority to reflect levy rates certified by school districts for calendar year 2009.

Sec. 3. RCW 84.52.0531 and 1997 c 259 s 2 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b) and (c) of this subsection minus (d) of this subsection:

(a) The district's levy base as defined in subsection (3) of this section multiplied by the district's maximum levy percentage as defined in subsection (4) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) For districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (4) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 1998 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection. In addition, for excess levies for collection in calendar year 2011 and thereafter, a district's levy base shall not include state or federal allocations attributable to nonresident students enrolled in the district in an online school program as defined under RCW 28A.250.010 based on an interdistrict agreement or under the provisions of RCW 28A.225.220 and 28A.225.225.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection (5) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(5) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsection (3) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of

the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(6) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(7) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(8) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(9) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

NEW SECTION. Sec. 4. Section 2 of this act expires January 1, 2012.

NEW SECTION. Sec. 5. Section 3 of this act takes effect January 1, 2012."

MOTION

Senator Tom moved that the following amendment by Senator Tom and others to the committee striking amendment be adopted:

On page 2, line 32, after "thereafter," strike "a" and insert "for districts with twenty-five percent or greater full-time equivalent students enrolled in an online school program as specified in this subsection, the"

On page 6, line 19, after "thereafter," strike "a" and insert "for districts with twenty-five percent or greater full-time equivalent students enrolled in an online school program as specified in this subsection, the"

Senator Tom spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Tom and others on page 2, line 32 to the committee striking amendment to Second Substitute House Bill No. 2759.

The motion by Senator Tom carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Second Substitute House Bill No. 2759.

The motion by Senator McAuliffe carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "learning;" strike the remainder of the title and insert "amending RCW 84.52.0531 and 84.52.0531; creating a new section; providing an effective date; and providing an expiration date."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 2759 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McAuliffe spoke in favor of passage of the bill.

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The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2759 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2759 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 44; Nays, 3; Absent, 1; Excused, 1.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Carrell, Holmquist and Morton

Absent: Senator Roach

Excused: Senator McCaslin

SECOND SUBSTITUTE HOUSE BILL NO. 2759 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Marr, Senator Prentice was excused.

SECOND READING

SENATE BILL NO. 6855, by Senators McDermott and Kohl-Welles

Exempting community centers from property taxation and imposing leasehold excise taxes on such property.

The measure was read the second time.

MOTION

On motion of Senator McDermott, the rules were suspended, Senate Bill No. 6855 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McDermott spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 6855.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 6855 and the bill passed the Senate by the following vote: Yeas, 39; Nays, 7; Absent, 1; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin, Stevens, Swecker and Tom

Voting nay: Senators Brandland, Holmquist, King, Parlette, Pflug, Schoesler and Zarelli

Absent: Senator Roach

Excused: Senators McCaslin and Prentice

SENATE BILL NO. 6855, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Delvin, Senator Roach was excused.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3209, by House Committee on Transportation (originally sponsored by Representatives Clibborn, Rolfes, Seaquist and Morris)

Managing costs of the ferry system.

The measure was read the second time.

MOTION

Senator Haugen moved that the following striking amendment by Senator Haugen and others be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that the Washington state ferry system is a critical component of the state's highway system. The legislature further finds that ferry system revenues are inadequate to support the capital requirements of aging vessels and terminals, and operating cost growth is fast outpacing the growth of fare revenue and gas tax revenue dedicated to the ferry system. As such, and drawing on more than four consecutive years of legislative analysis and operating policy reforms, the legislature finds that a realignment of the ferry compensation policy framework is an appropriate next step toward the legislature's long-term goal of assuring sustainable, cost-effective ferry service. The legislature further intends to address increased costs of ferry system operations in a manner that balances the interests of the ferry system, ferry workforce, and fare payers. It is the intent of the legislature that final recommendations from the joint transportation committee ferry study, submitted to the legislature during the 2009 regular legislative session, be enacted by the legislature and implemented by the department of transportation as soon as practicable in order to benefit from the efficiencies and cost savings identified in the recommendations. It is also the intent of the legislature to make various additional policy changes aimed at further efficiencies and cost savings. Since the study began in 2006, recommendations have been made with regard to long range planning and implementing the most efficient and effective balance between ferry capital and operating investments. It is intended that this act, the 2009-2011 omnibus transportation appropriations act, and subsequent transportation appropriations acts serve as vehicles for enacting these recommendations in order to maximize the utilization of existing capacity and to make the most efficient use of existing assets and tax dollars.

NEW SECTION. **Sec. 2.** (1) The office of financial management shall convene an expert panel of ferry operators to conduct a management review of the Washington state department of transportation, ferries division. The panel must have between three and five members and must represent both management and operations specialists, as well as public and private ferry operators that can bring best practices and state-of-the-art knowledge to this effort. The panel shall review past studies, conduct its own review, and make recommendations of the ferries division's management.

The study must be completed and submitted to the transportation committees of the senate and house of representatives by August 1, 2010, and must include:

(a) A review and comment on the studies and audits conducted on the ferries division over the past four years in areas of overhead and management organization structure and costs, maintenance practices, scheduling, and prioritization of preservation of vessels and terminals to ensure they represent current best practices;

(b) A report on the implementation of the recommendations in the studies and audits described in (a) of this subsection, and a report on their effectiveness compared to national best practices; and

(c) A review and report on the procedures for crew and service scheduling and recommendations on opportunities for improvement to provide the least cost of operations while maintaining service schedules that meet the needs of ferries customers.

(2) This section expires July 1, 2011.

Sec. 3. RCW 47.60.355 and 2007 c 512 s 11 are each amended to read as follows:

(1) Terminal and vessel preservation funding requests shall only be for assets in the life-cycle cost model.

(2) Terminal and vessel preservation funding requests that exceed five million dollars per project must be accompanied by a predesign study. The predesign study must include all elements required by the office of financial management.

Sec. 4. RCW 47.60.365 and 2007 c 512 s 12 are each amended to read as follows:

The department shall develop terminal and vessel design standards that:

(1) Adhere to vehicle level of service standards as described in RCW 47.06.140;

(2) Adhere to operational strategies as described in RCW 47.60.327; and

(3) Choose the most efficient balance between capital and operating investments by using a life-cycle cost analysis.

Sec. 5. RCW 47.60.375 and 2008 c 124 s 3 are each amended to read as follows:

(1) The capital plan must adhere to the following:

(a) A current ridership demand forecast;

(b) Vehicle level of service standards as described in RCW 47.06.140;

(c) Operational strategies as described in RCW 47.60.327; and

(d) Terminal and vessel design standards as described in RCW 47.60.365.

(2) The capital plan must include the following:

(a) A current vessel preservation plan;

(b) A current systemwide vessel rebuild and replacement plan as described in RCW 47.60.377;

(c) A current vessel deployment plan; and

(d) A current terminal preservation plan that adheres to the life-cycle cost model on capital assets as described in RCW 47.60.345.

Sec. 6. RCW 47.60.385 and 2008 c 124 s 6 are each amended to read as follows:

(1) Terminal improvement, vessel improvement, and vessel acquisition project funding requests must adhere to the capital plan((-

~~(2) Requests for terminal improvement design and construction funding must), include route-based planning, and be submitted with a predesign study that:~~

(a) Includes all elements required by the office of financial management;

(b) Separately identifies basic terminal and vessel elements essential for operation and their costs;

(c) Separately identifies additional elements to provide ancillary revenue and customer comfort and their costs;

(d) Includes construction phasing options that are consistent with forecasted ridership increases;

(e) Separately identifies additional elements requested by local governments and the cost and proposed funding source of those elements;

(f) Separately identifies multimodal elements and the cost and proposed funding source of those elements; ~~((and))~~

(g) Identifies all contingency amounts((- ~~(h)(3) When planning for new vessel acquisitions, the department must evaluate the long-term vessel operating costs related to fuel efficiency and staffing);~~

(h) Identifies any terminal, vessel, or other capital modifications that would be required as a result of the proposed capital project;

(i) Includes planned service modifications as a result of the proposed capital project, and the consistency of those service modifications with the capital plan; and

(j) Demonstrates the evaluation of long-term operating costs including fuel efficiency, staffing, and preservation.

(2) The department shall prioritize vessel preservation and acquisition funding requests over vessel improvement funding requests.

NEW SECTION. Sec. 7. A new section is added to chapter 47.60 RCW to read as follows:

(1) In addition to the requirements of RCW 47.60.385(1), initial requests for, and substantial modification requests to, vessel acquisition funding must be submitted with a predesign study that:

(a) Includes a business decision case on vessel sizing;

(b) Includes an updated vessel deployment plan demonstrating maximum use of existing vessels, and an updated systemwide vessel rebuild and replacement plan;

(c) Includes an analysis that demonstrates that acquiring a new vessel or improving an existing vessel is more cost-effective than other alternatives considered. At a minimum, alternatives explored must include:

(i) Alternatives to new vessel construction that increase capacity of existing vessels;

(ii) Service level changes in lieu of adding vessel capacity; and

(iii) Acquiring existing vessels or existing vessel plans rather than wholly new vessels or vessel plans; and

(d) Demonstrates that the vessel proposed for improvement, construction, or purchase, if intended to replace an existing vessel or to place an existing vessel into inactive or reserve status, is consistent with the scheduled replacements in the rebuild and replacement plan.

(2) In addition to the requirements of RCW 47.60.385(1), initial requests for, and substantial modification requests to, vessel improvement funding must be submitted with a predesign study that includes:

(a) An explanation of any regulatory changes necessitating the improvement;

(b) The requirements under subsection (1) of this section, if the improvement modifies the capacity of a vessel;

(c) A cost-benefit analysis of any modifications designed to improve fuel efficiency, including potential impacts on vessel maintenance and repair; and

(d) An assessment of out-of-service time associated with making the improvement and ongoing preservation of the improvement.

NEW SECTION. Sec. 8. (1) Signage must be prominently displayed at each terminal and on each vessel that informs the public that assaults on Washington state employees will be prosecuted to the full extent of the law.

(2) The department shall investigate the frequency, severity, and prosecutorial results of assaults on Washington state ferries employees and, if appropriate, make recommendations to the transportation committees of the senate and house of representatives during the 2011 legislative session regarding methods to decrease

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the number of assaults on employees and procedures for prosecuting those who assault employees.

(3) This section expires June 30, 2011.

Sec. 9. RCW 47.28.030 and 2007 c 218 s 90 are each amended to read as follows:

(1)(a) A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right-of-way purposes may be repaired or renovated pending the use of such right-of-way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof are less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars (~~PROVIDED, That~~).

(b) When delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars.

(c) When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor.

(d) To enable a larger number of small businesses, and minority, and women contractors to effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars.

(2) The rules adopted under this section:

((4)) (a) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

((2)) (b) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, material suppliers, mechanics, and subcontractors from the previous partial payment; and

((3)) (c) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

(3) The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW.

(4)(a) For the period of March 15, 2010, through June 30, 2011, work for less than one hundred twenty thousand dollars may be performed on ferry vessels and terminals by state forces.

(b) The department shall hire a disinterested, third party to conduct an independent analysis to identify methods of reducing out-of-service times for vessel maintenance, preservation, and improvement projects. The analysis must include options to extend the hours and days of operation at Eagle Harbor maintenance facility, consolidating work while vessels are at shipyards by having state forces perform services traditionally performed at Eagle Harbor at the shipyard, and decreasing the allowable time at shipyards. The analysis must also compare the out-of-service vessel times of performing services by state forces versus

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contracting out those services which in turn must be used to form a recommendation as to what the threshold of work performed on ferry vessels and terminals by state forces should be. This analysis must be presented to the transportation committees of the senate and house of representatives by December 1, 2010.

(c) The department shall develop a proposed ferry vessel maintenance, preservation, and improvement program and present it to the transportation committees of the senate and house of representatives by December 1, 2010. The proposed program must:

(i) Improve the basis for budgeting vessel maintenance, preservation, and improvement costs and for projecting those costs into a sixteen-year financial plan;

(ii) Limit the amount of planned out-of-service time to the greatest extent possible, including options associated with department staff as well as commercial shipyards; and

(iii) Be based on the service plan in the capital plan, recognizing that vessel preservation and improvement needs may vary by route.

(d) In developing the proposed ferry vessel maintenance, preservation, and improvement program, the department shall consider the following, related to reducing vessel out-of-service time:

(i) The costs compared to benefits of Eagle Harbor repair and maintenance facility operations options to include staffing costs and benefits in terms of reduced out-of-service time;

(ii) The maintenance requirements for on-vessel staff, including the benefits of a systemwide standard;

(iii) The costs compared to benefits of staff performing preservation or maintenance work, or both, while the vessel is underway, tied up between sailings, or not deployed;

(iv) A review of the department's vessel maintenance, preservation, and improvement program contracting process and contractual requirements;

(v) The costs compared to benefits of allowing for increased costs associated with expedited delivery;

(vi) A method for comparing the anticipated out-of-service time of proposed projects and other projects planned during the same construction period;

(vii) Coordination with required United States coast guard dry dockings;

(viii) A method for comparing how proposed projects relate to the service requirements of the route on which the vessel normally operates; and

(ix) A method for evaluating the ongoing maintenance and preservation costs associated with proposed improvement projects.

Sec. 10. RCW 47.64.120 and 2006 c 164 s 3 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the employer and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times((:)) to negotiate in good faith with respect to wages, hours, working conditions, and insurance, ((and health care benefits as limited by RCW 47.64.270,)) and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Except as provided under RCW 47.64.270, the employer is not required to bargain over health care benefits. Any retirement system or retirement benefits shall not be subject to collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The

interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

(3) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

Sec. 11. RCW 47.64.170 and 2007 c 160 s 1 are each amended to read as follows:

(1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of the employer or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with anyone other than the person who has been appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative.

(6)(a) Within ten working days after the first Monday in September of every odd-numbered year, the parties shall attempt to agree on an interest arbitrator to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. If the parties cannot agree on an arbitrator within the ten-day period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. The parties shall select an interest arbitrator using the coin toss/alternate strike method within thirty calendar days of receipt of the list. Immediately upon selecting an interest arbitrator, the parties shall cooperate to reserve dates with the arbitrator for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the name of the arbitrator and the dates reserved for bargaining and arbitration. This subsection (6)(a) imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(b) The negotiation of a proposed collective bargaining agreement by representatives of the employer and a ferry employee organization shall commence on or about February 1st of every even-numbered year.

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the

even-numbered year next preceding the biennial budget period during which the agreement should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) ~~((Until a new collective bargaining agreement is in effect, the terms and conditions of the previous collective bargaining agreement shall remain in force.))~~ It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect. After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) The office of financial management shall conduct a salary survey, for use in collective bargaining and arbitration, which must be conducted through a contract with a firm nationally recognized in the field of human resources management consulting.

(9)(a) The governor shall submit a request either for funds necessary to implement the collective bargaining agreements including, but not limited to, the compensation and fringe benefit provisions or for legislation necessary to implement the agreement, or both. Requests for funds necessary to implement the collective bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(b) The governor shall submit a request either for funds necessary to implement the arbitration awards or for legislation necessary to implement the arbitration awards, or both. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 47.64.210 and 47.64.300.

~~((9))~~ (10) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced

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appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

Sec. 12. RCW 47.64.200 and 2006 c 164 s 7 are each amended to read as follows:

As the first step in the performance of their duty to bargain, the employer and the employee organization shall endeavor to agree upon impasse procedures. Unless otherwise agreed to by the employee organization and the employer in their impasse procedures, the arbitrator or panel ~~((is limited to selecting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties. The employee organization and the employer may mutually agree to the impasse procedure under which the arbitrator or panel may))~~ shall issue a decision it deems just and appropriate with respect to each impasse item. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320.

Sec. 13. RCW 47.64.270 and 2006 c 164 s 17 are each amended to read as follows:

(1) The employer and one coalition of all the exclusive bargaining representatives subject to this chapter and chapter 41.80 RCW shall conduct negotiations regarding the dollar amount expended on behalf of each employee for health care benefits.

(2) Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW(~~and~~).

(3) The employer and employee organizations may collectively bargain for (~~other~~) insurance (~~and health care~~) plans other than health care benefits, and employer contributions may exceed that of other state agencies as provided in RCW 41.05.050. ~~((To the extent that ferry employees by bargaining unit have absorbed the required offset of wage increases by the amount that the employer's contribution for employees' and dependents' insurance and health care plans exceeds that of other state general government employees in the 1985-87 fiscal biennium, employees shall not be required to absorb a further offset except to the extent the differential between employer contributions for those employees and all other state general government employees increases during any subsequent fiscal biennium. If such differential increases in the 1987-89 fiscal biennium or the 1985-87 offset by bargaining unit is insufficient to meet the required deduction, the amount available for compensation shall be reduced by bargaining unit by the amount of such increase or the 1985-87 shortage in the required offset. Compensation shall include all wages and employee benefits.))~~

Sec. 14. RCW 47.64.280 and 2006 c 164 s 18 are each amended to read as follows:

(1) There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and one member from the public who has significant knowledge of maritime affairs. The public member shall be chair of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed

by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.

(2) The commission shall: (a) Adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in RCW 47.64.150; (b) provide for impasse mediation as required in RCW 47.64.210; and (c) ((provide salary surveys as required in RCW 47.64.220; and ~~((d)))~~ perform those duties required in RCW 47.64.300.

(3)(a) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.

(b) The parties are entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department.

(c) The commission shall adopt rules of procedure under chapter 34.05 RCW.

(d) The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter.

Sec. 15. RCW 47.64.320 and 2006 c 164 s 14 are each amended to read as follows:

(1) The mediator, arbitrator, or arbitration panel may consider only matters that are subject to bargaining under this chapter, except that health care benefits are not subject to interest arbitration.

(2) The decision of an arbitrator or arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefit provisions of an arbitrated collective bargaining agreement, is not binding on the state, the department of transportation, or the ferry employee organization.

(3) In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;

(b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

~~((b))~~ (c) The constitutional and statutory authority of the employer;

~~((c))~~ (d) Stipulations of the parties;

~~((d))~~ (e) The results of the salary survey as required in RCW ~~((47.64.220))~~ 47.64.170(8);

~~((f))~~ (f) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;

~~((g))~~ (g) Changes in any of the foregoing circumstances during the pendency of the proceedings;

~~((h))~~ (h) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature; ~~(and~~

~~((i))~~ (i) The ability of the state to retain ferry employees;

(j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received; and

(k) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

(4) This section applies to any matter before the respective mediator, arbitrator, or arbitration panel.

Sec. 16. RCW 41.80.020 and 2002 c 354 s 303 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

(a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;

(b) Any retirement system or retirement benefit; or

(c) Rules of the director of personnel or the Washington personnel resources board adopted under section 203, chapter 354, Laws of 2002.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4).

(4) The employer and the exclusive bargaining representative shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(5) The employer and the exclusive bargaining representative shall not bargain over matters pertaining to management rights established in RCW 41.80.040.

(6) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of

employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

(7) This section does not prohibit bargaining that affects contracts authorized by RCW 41.06.142.

Sec. 17. 2010 c ... (ESSB 6381) s 222 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION--MARINE--PROGRAM X

Puget Sound Ferry Operations Account--State

Appropriation.....	((\$425,922,000))
	<u>\$425,252,000</u>

The appropriation in this section is subject to the following conditions and limitations:

(1) \$78,754,952 of the Puget Sound ferry operations account--state appropriation is provided solely for auto ferry vessel operating fuel in the 2009-11 fiscal biennium. This appropriation is contingent upon the enactment of ~~((sections 716 and 701 of this act))~~ section 701, chapter . . . (ESSB 6381), Laws of 2010. All fuel purchased by the Washington state ferries at Harbor Island truck terminal for the operation of the Washington state ferries diesel powered vessels must be a minimum of five percent biodiesel blend so long as the per gallon price of diesel containing a five percent biodiesel blend level does not exceed the per gallon price of diesel by more than five percent.

(2) To protect the waters of Puget Sound, the department shall investigate nontoxic alternatives to fuel additives and other commercial products that are used to operate, maintain, and preserve vessels.

(3) If, after the department's review of fares and pricing policies, the department proposes a fuel surcharge, the department must evaluate other cost savings and fuel price stabilization strategies that would be implemented before the imposition of a fuel surcharge. The department shall report to the legislature and transportation commission on its progress of implementing new fuel forecasting and budgeting practices, price hedging contracts for fuel purchases, and fuel conservation strategies by November 30, 2010.

(4) The department shall strive to significantly reduce the number of injuries suffered by Washington state ferries employees. By December 15, 2009, the department shall submit to the office of financial management and the transportation committees of the legislature its implementation plan to reduce such injuries.

(5) The department shall continue to provide service to Sidney, British Columbia. The department may place a Sidney terminal departure surcharge on fares for out of state residents riding the Washington state ferry route that runs between Anacortes, Washington and Sidney, British Columbia, if the cost for landing/license fee, taxes, and additional amounts charged for docking are in excess of \$280,000 CDN. The surcharge must be limited to recovering amounts above \$280,000 CDN.

(6) The department shall analyze operational solutions to enhance service on the Bremerton to Seattle ferry run. The Washington state ferries shall report its analysis to the transportation committees of the legislature by December 1, 2009.

(7) The office of financial management budget instructions require agencies to recast enacted budgets into activities. The Washington state ferries shall include a greater level of detail in its 2011-13 omnibus transportation appropriations act request, as determined jointly by the office of financial management, the Washington state ferries, and the legislative transportation committees.

(8) ~~((~~\$4,794,000~~))~~ \$4,124,000 of the Puget Sound ferry operations account--state appropriation is provided solely for commercial insurance for ferry assets. The office of financial

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management, after consultation with the transportation committees of the legislature, must present a business plan for the Washington state ferry system's insurance coverage to the 2010 legislature. The business plan must include a cost-benefit analysis of Washington state ferries' current commercial insurance purchased for ferry assets and a review of self- insurance for noncatastrophic events.

(9) \$1,100,000 of the Puget Sound ferry operations account--state appropriation is provided solely for a marketing program. The department shall present a marketing program proposal to the transportation committees of the legislature during the 2010 legislative session before implementing this program. Of this amount, \$10,000 is for the city of Port Townsend and \$10,000 is for the town of Coupeville for mitigation expenses related to only one vessel operating on the Port Townsend/Keystone ferry route. The moneys provided to the city of Port Townsend and town of Coupeville are not contingent upon the required marketing proposal.

(10) \$350,000 of the Puget Sound ferry operations account--state appropriation is provided solely for two extra trips per day during the summer of 2009 season, beyond the current schedule, on the Port Townsend/Keystone route.

(11) When purchasing uniforms that are required by collective bargaining agreements, the department shall contract with the lowest cost provider.

(12) The legislature finds that measuring the performance of Washington state ferries requires the measurement of quality, timeliness, and unit cost of services delivered to customers. Consequently, the department must develop a set of metrics that measure that performance and report to the transportation committees of the legislature and to the office of financial management on the development of these measurements along with recommendations to the 2010 legislature on which measurements must become a part of the next omnibus transportation appropriations act.

(13) As a priority task, the department is directed to propose a comprehensive incident and accident investigation policy and appropriate procedures, and to provide the proposal to the legislature by November 1, 2009, using existing resources and staff expertise. In addition to consulting with ferry system unions and the United States coast guard, the Washington state ferries is encouraged to solicit independent outside expertise on incident and accident investigation best practices as they may be found in other organizations with a similar concern for marine safety. It is the intent of the legislature to enact the policies into law and to publish that law and procedures as a manual for Washington state ferries' accident/incident investigations. Until that time, the Washington state ferry system must exercise particular diligence to assure that any incident or accident investigations are conducted within the spirit of the guidelines of this act. The proposed policy must contain, at a minimum:

(a) The definition of an incident and an accident and the type of investigation that is required by both types of events;

(b) The process for appointing an investigating officer or officers and a description of the authorities and responsibilities of the investigating officer or officers. The investigating officer or officers must:

(i) Have the appropriate training and experience as determined by the policy;

(ii) Not have been involved in the incident or accident so as to avoid any conflict of interest;

(iii) Have full access to all persons, records, and relevant organizations that may have information about or may have contributed to, directly or indirectly, the incident or accident under investigation, in compliance with any affected employee's or employees' respective collective bargaining agreement and state

laws and rules regarding public disclosure under chapter 42.56 RCW;

(iv) Be provided with, if requested by the investigating officer or officers, appropriate outside technical expertise; and

(v) Be provided with staff and legal support by the Washington state ferries as may be appropriate to the type of investigation;

(c) The process of working with the affected employee or employees in accordance with the employee's or employees' respective collective bargaining agreement and the appropriate union officials, within protocols afforded to all public employees;

(d) The process by which the United States coast guard is kept informed of, interacts with, and reviews the investigation;

(e) The process for review, approval, and implementation of any approved recommendations within the department; and

(f) The process for keeping the public informed of the investigation and its outcomes, in compliance with any affected employee's or employees' respective collective bargaining agreement and state laws and rules regarding public disclosure under chapter 42.56 RCW.

(14) \$7,300,000 of the Puget Sound ferry operations account--state appropriation is provided solely for the purposes of travel time associated with Washington state ferries employees. However, if Engrossed Substitute House Bill No. 3209 (managing costs of ferry system) is enacted by June 30, 2010, containing an appropriation for purposes of travel time associated with Washington state ferries employees, the amount provided in this subsection lapses.

(15) \$50,000 of the Puget Sound ferry operations account--state appropriation is provided solely to implement a mechanism to report on-time performance statistics.

(a) The department shall conduct a study to identify process changes that would improve on-time performance on a route-by-route basis. The study must include looking into the slowing down of vessels for fuel economy purposes and touch-and-go sailings on peak runs. The department shall report its findings to the transportation committees of the senate and house of representatives by December 1, 2010.

(b) The department shall, by November 1, 2010, report to the transportation committees of the legislature statistics regarding its on-time arrival and departure status on a route-by-route and month-by-month basis, as well as an annual route-by-route and systemwide basis, weighted by the number of customers on each sailing and distinguishing peak period on-time performance. The statistics must include reasons for any delays over ten minutes from the scheduled time. The statistics must be prominently displayed on the Washington state ferries' web site. Each Washington state ferries vessel and terminal must prominently display the statistics as they relate to their specific route.

(16) The department shall investigate outsourcing the call center functions planned for the ferry reservation system and report its findings to the transportation committees of the senate and house of representatives by December 15, 2010.

(17) By July 1, 2010, the department shall provide to the governor and the transportation committees of the senate and house of representatives a listing of all benefits that Washington state ferries union employees receive that other state employees do not traditionally receive. The listing must include any costs associated with these benefits.

Sec. 18. 2010 c ... (ESSB 6381) s 306 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION--WASHINGTON STATE FERRIES CONSTRUCTION--PROGRAM W

Puget Sound Capital Construction Account--State
Appropriation.....\$126,824,000

Puget Sound Capital Construction Account--Federal	
Appropriation.....	\$60,364,000
Puget Sound Capital Construction Account--Local	
Appropriation.....	\$200,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation.....	\$51,734,000
Transportation Partnership Account--State	
Appropriation.....	\$66,879,000
Multimodal Transportation Account--State	
Appropriation.....	\$149,000
TOTAL APPROPRIATION.....	\$306,150,000

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

(1) \$126,824,000 of the Puget Sound capital construction account-- state appropriation, \$60,364,000 of the Puget Sound capital construction account--federal appropriation, \$200,000 of the Puget Sound capital construction account--local appropriation, \$66,879,000 of the transportation partnership account--state appropriation, \$51,734,000 of the transportation 2003 account (nickel account)--state appropriation, and \$149,000 of the multimodal transportation account-- state appropriation are provided solely for ferry capital projects, project support, and administration as listed in LEAP Transportation Document ALL PROJECTS 2010-2 as developed March 8, 2010, Program - Ferries Construction Program (W). Of the total appropriation, a maximum of \$10,627,000 may be used for administrative support, a maximum of \$8,184,000 may be used for terminal project support, and a maximum of \$4,497,000 may be used for vessel project support. Of the total appropriation, \$5,851,000 is provided solely for a reservation system and associated communications projects.

(2) \$51,734,000 of the transportation 2003 account (nickel account)--state appropriation, \$63,100,000 of the transportation partnership account--state appropriation, and \$10,164,000 of the Puget Sound capital construction account--state appropriation are provided solely for the acquisition of three new Island Home class ferry vessels subject to the conditions of RCW 47.56.780. The department shall pursue a contract for the second and third Island Home class ferry vessels with an option to purchase a fourth Island Home class ferry vessel. However, if sufficient resources are available to build one 144-auto vessel prior to exercising the option to build the fourth Island Home class ferry vessel, procurement of the fourth Island Home class ferry vessel will be postponed and the department shall pursue procurement of a 144-auto vessel.

(a) The first two Island Home class ferry vessels must be placed on the Port Townsend-Keystone route.

(b) The department may add additional passenger capacity to one of the Island Home class ferry vessels to make it more flexible within the system in the future, if doing so does not require additional staffing on the vessel.

(c) Cost savings from the following initiatives will be included in the funding of these vessels: The department's review and update of the vessel life-cycle cost model as required under this section; and the implementation of technology efficiencies as required under section 602 of this act.

(3)(a) \$8,450,000 of the Puget Sound capital construction account-- state appropriation and \$2,450,000 of the transportation partnership account--state appropriation are provided solely for the following projects related to the design of a 144-vehicle vessel class: (i) \$1,380,000 is provided solely for completion of the contract for owner- furnished equipment; (ii) \$8,320,000 is provided solely for completion of the technical design, detail design, and production drawings, all of which must plan for an aluminum superstructure; (iii) \$480,000 is provided solely for the storage of owner-furnished equipment; and (iv) a maximum of \$720,000 is for construction engineering. In completing the contract for owner-furnished equipment, the department shall use as much of the already procured

equipment as is practicable on the Island Home class ferry vessels if it is likely to be obsolete before it is used in procured 144-vehicle vessels.

(b) The department shall conduct a cost-benefit study on alternative furnishings and fittings for the 144-vehicle vessel class. The study must review the proposed interior furnishings and fittings for the long-term maintenance and out-of-service vessel costs and, if appropriate, propose alternative interior furnishings and fittings that will decrease long-term maintenance and out-of-service vessel costs. The study must include a projection of out-of-service time and a life- cycle cost analysis of planned out-of-service time, including the impact on fleet size. The department must submit the study to the joint transportation committee by August 1, 2010.

(c) The department shall identify costs for any additional detail design and production drawings costs related to incorporating the aluminum superstructure and any changes in the proposed furnishings and fittings.

(4) \$6,300,000 of the Puget Sound capital construction account-- state appropriation is provided solely for emergency capital costs.

(5) \$3,000,000 of the Puget Sound capital construction account-- federal appropriation is provided solely for completing the Anacortes terminal design up to the maximum allowable construction cost phase. Beyond preparing environmental work, these funds may be spent only after the following conditions have been met: (a) A value engineering process is conducted on the existing design and the concept of a terminal building smaller than preferred alternative; (b) the office of financial management participates in the value engineering process; (c) the office of financial management concurs with the recommendations of the value engineering process; and (d) the office of financial management gives its approval to proceed with the design work.

(6) \$3,965,000 of the Puget Sound capital construction account-- state appropriation is provided solely for the following vessel projects: Waste heat recovery pilot project for the Issaquah; jumbo Mark 1 class steering gear ventilation pilot project; and improvements to the Yakima and Kaleetan propulsion controls to allow for two engine operation. Before beginning these projects, the Washington state ferries must ensure the vessels' out-of-service time does not negatively impact service to the system.

(7) The department shall pursue purchasing a foreign-flagged vessel for service on the Anacortes, Washington to Sidney, British Columbia ferry route.

(8) The department shall provide to the office of financial management and the legislature quarterly reports providing the status on each project listed in this section and in the project lists submitted pursuant to this act and on any additional projects for which the department has expended funds during the 2009-11 fiscal biennium. Elements must include, but not be limited to, project scope, schedule, and costs. The department shall also provide the information required under this subsection via the transportation executive information systems (TEIS). The quarterly report regarding the status of projects identified on the list referenced in subsection (1) of this section must be developed according to an earned value method of project monitoring.

(9) The department shall review and adjust its capital program staffing levels to ensure staffing is at the most efficient level necessary to implement the capital program in the omnibus transportation appropriations act. The Washington state ferries shall report this review and adjustment to the office of financial management and the house and senate transportation committees of the legislature by July 2009.

(10) \$1,200,000 of the total appropriation is provided solely for improving the toll booth configuration at the Port Townsend and Keystone ferry terminals.

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(11) \$2,636,000 of the total appropriation is provided solely for continued permitting work on the Mukilteo ferry terminal. The department shall seek additional federal funding for this project.

(12) The department shall develop a proposed ferry vessel maintenance, preservation, and improvement program and present it to the transportation committees of the legislature by July 1, 2010. The proposal must:

(a) Improve the basis for budgeting vessel maintenance, preservation, and improvement costs and for projecting those costs into a sixteen-year financial plan;

(b) Limit the amount of planned out-of-service time to the greatest extent possible, including options associated with department staff as well as commercial shipyards. At a minimum, the department shall consider the following:

(i) The costs compared to benefits of Eagle Harbor repair and maintenance facility operations options to include staffing costs and benefits in terms of reduced out-of-service time;

(ii) The maintenance requirements for on-vessel staff, including the benefits of a systemwide standard;

(iii) The costs compared to benefits of staff performing preservation or maintenance work, or both, while the vessel is underway, tied up between sailings, or not deployed;

(iv) A review of the department's vessel maintenance, preservation, and improvement program contracting process and contractual requirements;

(v) The costs compared to benefits of allowing for increased costs associated with expedited delivery;

(vi) A method for comparing the anticipated out-of-service time of proposed projects and other projects planned during the same construction period;

(vii) Coordination with required United States coast guard dry dockings;

(viii) A method for comparing how proposed projects relate to the service requirements of the route on which the vessel normally operates; and

(ix) A method for evaluating the ongoing maintenance and preservation costs associated with proposed improvement projects; and

(c) Be based on the service plan in the capital plan, recognizing that vessel preservation and improvement needs may vary by route.

(13) \$247,000 of the Puget Sound capital construction account--state appropriation is provided solely for the Washington state ferries to review and update its vessel life-cycle cost model and report the results to the house of representatives and senate transportation committees of the legislature by ~~(March 15)~~ December 1, 2010. This review will evaluate the impact of the planned out-of-service periods scheduled for each vessel on the ability of the overall system to deliver uninterrupted service and will assess the risk of service disruption from unscheduled maintenance or longer than planned maintenance periods.

(14) The department shall work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on all large ferry terminal projects. These projects must be conducted with active archaeological management. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

(15) The Puget Sound capital construction account--state appropriation includes up to \$114,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

(16) The Puget Sound capital construction account--state appropriation reflects the reduction of three terminal positions due to decreased terminal activity and funding.

(17) The department shall provide data to the transportation committees of the senate and house of representatives for a transparent analysis of travel pay policies.

NEW SECTION. Sec. 19. The following acts or parts of acts are each repealed:

(1) RCW 47.61.010 (Authority to enter into agreement and apply for financial assistance) and 1984 c 7 s 338 & 1965 ex.s. c 56 s 1;

(2) RCW 47.61.020 (Bonds for matching funds--Issuance and sale) and 1965 ex.s. c 56 s 2;

(3) RCW 47.61.030 (Term of bonds--Terms and conditions) and 1965 ex.s. c 56 s 3;

(4) RCW 47.61.040 (Bonds--Signatures--Registration--Where payable-- Negotiable instruments) and 1965 ex.s. c 56 s 4;

(5) RCW 47.61.050 (Bonds--Denominations--Manner and terms of sale-- Legal investment for state funds) and 1965 ex.s. c 56 s 5;

(6) RCW 47.61.060 (Proceeds of bonds--Deposit and use) and 1965 ex.s. c 56 s 6;

(7) RCW 47.61.070 (Statement describing nature of bond obligation-- Pledge of excise taxes) and 1965 ex.s. c 56 s 7;

(8) RCW 47.61.080 (Bonds to reflect terms and conditions of grant agreement) and 1965 ex.s. c 56 s 8;

(9) RCW 47.61.090 (Designation of funds to repay bonds and interest) and 1984 c 7 s 339 & 1965 ex.s. c 56 s 9;

(10) RCW 47.61.100 (Bond repayment procedure--Highway bond retirement fund) and 1965 ex.s. c 56 s 10;

(11) RCW 47.61.110 (Sums in excess of bond retirement requirements--Use) and 1965 ex.s. c 56 s 11;

(12) RCW 47.60.395 (Evaluation of cost allocation methodology and preservation and improvement costs--Exception) and 2009 c 470 s 707 & 2007 c 512 s 15;

(13) RCW 47.60.649 (Passenger-only ferry service--Finding) and 1998 c 166 s 1;

(14) RCW 47.60.652 (Passenger-only ferry service--Vessel and terminal acquisition, procurement, and construction) and 1998 c 166 s 2;

(15) RCW 47.60.654 (Passenger-only ferry service--Contingency) and 1998 c 166 s 3;

(16) RCW 47.60.658 (Passenger-only ferry service between Vashon and Seattle) and 2007 c 223 s 8 & 2006 c 332 s 3;

(17) RCW 47.60.770 (Jumbo ferry construction--Notice) and 1993 c 493 s 1;

(18) RCW 47.60.772 (Jumbo ferry construction--Bidding documents) and 1993 c 493 s 2;

(19) RCW 47.60.774 (Jumbo ferry construction--Procedure on conclusion of evaluation) and 1993 c 493 s 4;

(20) RCW 47.60.776 (Jumbo ferry construction--Contract) and 1993 c 493 s 5;

(21) RCW 47.60.778 (Jumbo ferry construction--Bid deposits--Low bidder claiming error) and 1996 c 18 s 9 & 1993 c 493 s 6;

(22) RCW 47.60.780 (Jumbo ferry construction--Propulsion system acquisition) and 1994 c 181 s 2; and

(23) RCW 47.64.220 (Salary survey) and 2006 c 164 s 10, 2005 c 274 s 308, 1999 c 256 s 1, 1989 c 327 s 2, & 1983 c 15 s 13.

NEW SECTION. Sec. 20. Section 17 of this act takes effect if section 222, chapter . . . (Engrossed Substitute Senate Bill No. 6381), Laws of 2010 is enacted into law. If section 222, chapter . . . (Engrossed Substitute Senate Bill No. 6381), Laws of 2010 is not enacted into law, section 17 of this act is void in its entirety.

NEW SECTION. Sec. 21. Section 18 of this act takes effect if section 306, chapter . . . (Engrossed Substitute Senate Bill No. 6381), Laws of 2010 is enacted into law. If section 306, chapter . . .

(Engrossed Substitute Senate Bill No. 6381), Laws of 2010 is not enacted into law, section 18 of this act is void in its entirety.

NEW SECTION. Sec. 22. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 23. 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."

MOTION

Senator Haugen moved that the following amendment by Senators Haugen and Swecker to the striking amendment be adopted:

On page 7, line 17 of the amendment, after "options", strike all material through "facility," on line 18 and insert "that consider"

On page 7, line 20 of the amendment, after "shipyard", strike "."

Senator Haugen spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Haugen and Swecker on page 7, line 17 to the striking amendment to Engrossed Substitute House Bill No. 3209.

The motion by Senator Haugen carried and the amendment to the striking amendment was adopted by voice vote.

MOTION

Senator King moved that the following amendment by Senator King to the striking amendment be adopted.

On page 18, after line 4 of the amendment, insert the following:

"NEW SECTION. Sec. 17. A new section is added to chapter 47.60 RCW to read as follows:

Upon expiration of the collective bargaining agreements in existence as of the effective date of this section, the department shall not allow free passage on any ferry vessel operated by the department to:

(1) Any department employee unless it is directly related to the employee's job duties, directly reporting to duty, or directly returning home from duty;

(2) Any former department employee or their families; or

(3) Any department employee's family members."

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

Senators King, Pflug and Sheldon spoke in favor of adoption of the amendment to the striking amendment.

MOTION

On motion of Senator Ranker, Senator Hobbs and Marr were excused.

Senators Haugen and Keiser spoke against adoption of the amendment to the striking amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator King on page 18, after line 4 to the striking amendment to Engrossed Substitute House Bill No. 3209.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator King and the amendment to the striking amendment was adopted by the following vote: Yeas, 24; Nays, 20; Absent, 2; Excused, 3.

Voting yea: Senators Becker, Benton, Brandland, Carrell, Delvin, Franklin, Hargrove, Hewitt, Holmquist, Honeyford, Kastama, Kauffman, Kilmer, King, Morton, Oemig, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Voting nay: Senators Berkey, Brown, Eide, Fairley, Fraser, Gordon, Haugen, Jacobsen, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Prentice, Pridmore, Ranker, Regala, Rockefeller and Shin

Absent: Senators Hatfield and Tom

Excused: Senators Hobbs, Marr and McCaslin

MOTION

Senator Pflug moved that the following amendment by Senator Pflug to the striking amendment be adopted.

On page 27, after line 37 of the amendment, insert the following:

"NEW SECTION. Sec. 20. A new section is added to chapter 47.60 RCW to read as follows:

Upon expiration of the collective bargaining agreements in existence as of the effective date of this section:

The department shall not reimburse any department employee for mileage or travel time costs for commuting between the employee's home residence and work assignment when the employee chooses, based on seniority, the work assignment location."

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

Senator Pflug spoke in favor of adoption of the amendment to the striking amendment.

Senator Haugen spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Pflug on page 27, after line 37 to the striking amendment to Engrossed Substitute House Bill No. 3209.

The motion by Senator Pflug failed and the amendment to the striking amendment was not adopted by a rising vote.

MOTION

Senator Holmquist moved that the following amendment by Senators Holmquist and Honeyford to the striking amendment be adopted.

On page 7, line 11 of the amendment, after "(4)(a)", strike all material through "(b)" on line 14

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

Senators Holmquist and Honeyford spoke in favor of adoption of the amendment to the striking amendment.

Senators Haugen and Rockefeller spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Holmquist and Honeyford on page 7, line 11 to the striking amendment to Engrossed Substitute House Bill No. 3209.

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The motion by Senator Holmquist failed and the amendment to the striking amendment was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Haugen and Swecker as amended to Engrossed Substitute House Bill No. 3209.

The motion by Senator Haugen carried and the striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 1 of the title, after "system;" strike the remainder of the title and insert "amending RCW 47.60.355, 47.60.365, 47.60.375, 47.60.385, 47.28.030, 47.64.120, 47.64.170, 47.64.200, 47.64.270, 47.64.280, 47.64.320, and 41.80.020; amending 2010 c. . . (ESSB 6381) ss 222 and 306 (uncodified); adding a new section to chapter 47.60 RCW; creating new sections; repealing RCW 47.61.010, 47.61.020, 47.61.030, 47.61.040, 47.61.050, 47.61.060, 47.61.070, 47.61.080, 47.61.090, 47.61.100, 47.61.110, 47.60.395, 47.60.649, 47.60.652, 47.60.654, 47.60.658, 47.60.770, 47.60.772, 47.60.774, 47.60.776, 47.60.778, 47.60.780, and 47.64.220; providing contingent effective dates; providing expiration dates; and declaring an emergency."

On page 30, line 5 of the title amendment, after "adding" strike "a new section" and insert "new sections"

MOTION

On motion of Senator Haugen, the rules were suspended, Engrossed Substitute House Bill No. 3209 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Haugen and Swecker spoke in favor of passage of the bill.

Senator Pflug spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 3209 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 3209 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 39; Nays, 9; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Benton, Carrell, Hewitt, Holmquist, Honeyford, Morton, Pflug, Schoesler and Stevens

Excused: Senator McCaslin

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3209 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

RULING BY THE PRESIDENT

President Owen: "In ruling on the Point of Order raised by Senator Schoesler as to whether the House amendments to Engrossed Second Substitute Senate Bill 6267 fit within the scope and object of the underlying bill, the President finds and rules as follows:

The underlying bill as it left the Senate expanded an existing program for processing water rights applications to include cost reimbursement programs and expedited processing, and provided some additional tools for water users and the Department of Ecology to use in determining water rights. The House amendments add additional changes to the program for processing such rights, such as including direct funding, increasing current fees, and allowing the agency to adjust fees following consultation with the Legislature. The amendments further make changes to metering requirements for certain exempt wells, a provision not directly related to processing water rights applications. Altogether, the House amendments impermissibly broaden the subject matter of the bill to include substantive provisions outside of the original bill's focus, which was limited to modifying an existing program to process or expedite water right applications.

For these reasons, the President finds that the House amendments are beyond the scope and object of the Senate bill, and Senator Schoesler's point is well-taken."

MESSAGE FROM THE HOUSE

March 10, 2010

MR. PRESIDENT:

The House receded from its amendment to SENATE BILL NO. 6804 and passed the bill without the House amendment. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 8, 2010

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SECOND SUBSTITUTE HOUSE BILL NO. 2731 and asks the Senate to recede therefrom.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kauffman moved that the Senate recede from its position in the Senate amendment(s) to Second Substitute House Bill No. 2731.

The President declared the question before the Senate to be motion by Senator Kauffman that the Senate recede from its position in the Senate amendment(s) to Second Substitute House Bill No. 2731.

The motion by Senator Kauffman carried and the Senate receded from its position in the Senate amendment(s) to Second Substitute House Bill No. 2731 by voice vote.

MOTION

On motion of Senator Kauffman, the rules were suspended and Second Substitute House Bill No. 2731 was returned to second reading for the purposes of amendment.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2731, by House Committee on Ways & Means (originally sponsored by Representatives Goodman, Haler, Maxwell, Priest, Kagi, Sullivan, Seaquist, Quall, O'Brien, Jacks, Haigh, Pedersen, Darneille, Kenney, Rolfes, Hunter, Williams, Orwall, Lias, Carlyle, Roberts, Simpson, Walsh, Nelson, Kelley, Dickerson, Appleton, Eddy, Sells and Morrell)

Creating an early learning program for educationally at-risk children.

The measure was read the second time.

MOTION

Senator Kauffman moved that the following striking amendment by Senators Kauffman and McAuliffe be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that a critical factor in the eventual successful outcome of a K-12 education is for students to begin school ready, both intellectually and socially, to learn. The legislature also finds that, due to a variety of factors, some young children need supplemental instruction in preschool to assure that they have the opportunity to participate meaningfully and reach the necessary levels of achievement in the regular program of basic education. The legislature further finds that children who participate in high quality preschool programs have improved educational and life outcomes and are more likely to graduate from high school and pursue higher education, experience successful employment opportunities, and have increased earnings. Therefore the legislature intends to create a program of early learning that, when fully implemented, shall be an entitlement program for eligible children.

The legislature also finds that the state early childhood education and assistance program was established to help children from low-income families be prepared for kindergarten, and that the program has been a successful model for achieving that goal. Therefore, the legislature intends that the first phase of implementing the entitlement program of early learning shall be accomplished by utilizing the program standards and eligibility criteria in the early childhood education and assistance program. The legislature also intends that the implementation of subsequent phases of the program established by the ready for school act of 2010 will be aligned with the implementation of the state's all-day kindergarten program in order to maximize the gains resulting from investments in the two programs.

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

(1) "Community-based early learning providers" includes for-profit and nonprofit licensed providers of child care and preschool programs.

(2) "Program" means the program of early learning established in section 3 of this act for eligible children who are three and four years of age.

NEW SECTION. Sec. 3. PROGRAM STANDARDS. (1) Beginning September 1, 2011, an early learning program to provide voluntary preschool opportunities for children three and four years of age shall be implemented according to the funding and implementation plan in section 4 of this act. The program must be a comprehensive program providing early childhood education and family support, options for parental involvement, and health information, screening, and referral services, as family need is determined. Participation in the program is voluntary. On a space available basis, the program may allow enrollment of children who are not otherwise eligible by assessing a fee.

(2) The first phase of the program shall be implemented by utilizing the program standards and eligibility criteria in the early childhood education and assistance program.

(3) The director shall adopt rules for the following program components, as appropriate and necessary during the phased implementation of the program:

(a) Minimum program standards, including lead teacher, assistant teacher, and staff qualifications;

(b) Approval of program providers; and

(c) Accountability and adherence to performance standards.

(4) The department has administrative responsibility for:

(a) Approving and contracting with providers according to rules developed by the director under this section;

(b) In partnership with school districts, monitoring program quality and assuring the program is responsive to the needs of eligible children;

(c) Assuring that program providers work cooperatively with school districts to coordinate the transition from preschool to kindergarten so that children and their families are well-prepared and supported; and

(d) Providing technical assistance to contracted providers.

NEW SECTION. Sec. 4. FUNDING AND STATEWIDE IMPLEMENTATION. (1) Funding for the program of early learning established under this chapter must be appropriated to the department. Allocations must be made on the basis of eligible children enrolled with eligible providers.

(2) The program shall be implemented in phases, so that full implementation is achieved in the 2018-19 school year.

(3) For the initial phase of the early learning program in school years 2011-12 and 2012-13, the legislature shall appropriate funding to the department for implementation of the program in an amount not less than the 2009-2011 enacted budget for the early childhood education and assistance program. The appropriation shall be sufficient to fund an equivalent number of slots as funded in the 2009-2011 enacted budget.

(4) Beginning in the 2013-14 school year, additional funding for the program must be phased in beginning in school districts providing all-day kindergarten programs under RCW 28A.150.315.

(5) Funding shall continue to be phased in incrementally each year until full statewide implementation of the early learning program is achieved in the 2018-19 school year, at which time any eligible child shall be entitled to be enrolled in the program.

(6) The department and the office of financial management shall annually review the caseload forecasts for the program and, beginning December 1, 2012, and annually thereafter, report to the governor and the appropriate committees of the legislature with recommendations for phasing in additional funding necessary to achieve statewide implementation in the 2018-19 school year.

(7) School districts and approved community-based early learning providers may contract with the department to provide services under the program. The department shall collaborate with school districts, community-based providers, and educational service districts to promote an adequate supply of approved providers.

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NEW SECTION. Sec. 5. A new section is added to chapter 28A.320 RCW to read as follows:

For the program of early learning established in section 3 of this act, school districts:

(1) Shall work cooperatively with program providers to coordinate the transition from preschool to kindergarten so that children and their families are well-prepared and supported; and

(2) May contract with the department of early learning to deliver services under the program.

Sec. 6. RCW 43.215.020 and 2007 c 394 s 5 are each amended to read as follows:

(1) The department of early learning is created as an executive branch agency. The department is vested with all powers and duties transferred to it under this chapter and such other powers and duties as may be authorized by law.

(2) The primary duties of the department are to implement state early learning policy and to coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To make early learning resources available to parents and caregivers;

(c) To carry out activities, including providing clear and easily accessible information about quality and improving the quality of early learning opportunities for young children, in cooperation with the nongovernmental private-public partnership;

(d) To administer child care and early learning programs;

(e) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so that programs can function in an integrated fashion;

(f) To support the implementation of the nongovernmental private- public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

(g) To work cooperatively and in coordination with the early learning council;

(h) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12 programs; ~~(and)~~

(i) To develop and adopt rules for administration of the program of early learning established in section 3 of this act; and

(j) Upon the development of an early learning information system, to make available to parents timely inspection and licensing action information through the internet and other means.

(3) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to direct the education, development, and upbringing of their children. The department shall include parents and legal guardians in the development of policies and program decisions affecting their children.

Sec. 7. RCW 43.215.405 and 2006 c 265 s 210 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903.

(1) "Advisory committee" means the advisory committee under RCW 43.215.420.

(2) "Department" means the department of early learning.

(3) "Eligible child" means a child not eligible for kindergarten whose family income is at or below one hundred ten percent of the federal poverty level, as published annually by the federal

department of health and human services, and includes a child whose family is eligible for public assistance, and who is not a participant in a federal or state program providing comprehensive services; a child eligible for special education due to disability under RCW 28A.155.020; and may include children who are eligible under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment in the early childhood program. Priority for enrollment shall be given to children from families with the lowest income, children in foster care, or to eligible children from families with multiple needs.

(4) "Approved programs" means those state-supported education and special assistance programs which are recognized by the department as meeting the minimum program rules adopted by the department to qualify under RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903 and are designated as eligible for funding by the department under RCW 43.215.430 and 43.215.440.

(5) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(6) "Family support services" means providing opportunities for parents to:

(a) Actively participate in their child's early childhood program;

(b) Increase their knowledge of child development and parenting skills;

(c) Further their education and training;

(d) Increase their ability to use needed services in the community;

(e) Increase their self-reliance.

NEW SECTION. Sec. 8. Sections 2 through 4 and 9 of this act are each added to chapter 43.215 RCW.

NEW SECTION. Sec. 9. This act may be known as the ready for school act of 2010."

Senator Kauffman spoke in favor of adoption of the striking amendment.

Senator King spoke against adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Kauffman and McAuliffe to Second Substitute House Bill No. 2731.

The motion by Senator Kauffman carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "children;" strike the remainder of the title and insert "amending RCW 43.215.020 and 43.215.405; adding new sections to chapter 43.215 RCW; adding a new section to chapter 28A.320 RCW; and creating a new section."

MOTION

On motion of Senator Kauffman, the rules were suspended, Second Substitute House Bill No. 2731 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2731 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2731 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 33; Nays, 15; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brandland, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin and Tom

Voting nay: Senators Becker, Benton, Carrell, Delvin, Hewitt, Honeyford, King, Morton, Parlette, Pflug, Roach, Schoesler, Stevens, Swecker and Zarelli

Excused: Senator McCaslin

SECOND SUBSTITUTE HOUSE BILL NO. 2731 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Marr, Senator Haugen was excused.

MESSAGE FROM THE HOUSE

March 9, 2010

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6520 with the following amendment(s): 6520-S AMH LGH H5377.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 36.70A.560 and 2007 c 353 s 2 are each amended to read as follows:

(1) For the period beginning May 1, 2007, and concluding July 1, ~~((2010))~~ 2011, counties and cities may not amend or adopt critical area ordinances under RCW 36.70A.060(2) as they specifically apply to agricultural activities. Nothing in this section:

(a) Nullifies critical area ordinances adopted by a county or city prior to May 1, 2007, to comply with RCW 36.70A.060(2);

(b) Limits or otherwise modifies the obligations of a county or city to comply with the requirements of this chapter pertaining to critical areas not associated with agricultural activities; or

(c) Limits the ability of a county or city to adopt or employ voluntary measures or programs to protect or enhance critical areas associated with agricultural activities.

(2) Counties and cities subject to deferral requirements under subsection (1) of this section:

(a) Should implement voluntary programs to enhance public resources and the viability of agriculture. Voluntary programs implemented under this subsection (2)(a) must include measures to evaluate the successes of these programs; and

(b) Must review and, if necessary, revise critical area ordinances as they specifically apply to agricultural activities to comply with the requirements of this chapter by December 1, ~~((2011))~~ 2012.

(3) For purposes of this section and RCW 36.70A.5601, "agricultural activities" means agricultural uses and practices currently existing or legally allowed on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because

the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation.

Sec. 2. RCW 36.70A.5601 and 2007 c 353 s 3 are each amended to read as follows:

(1) ~~((Subject to the availability of amounts appropriated for this specific purpose.))~~ The William D. Ruckelshaus Center must conduct an examination of the conflicts between agricultural activities and critical area ordinances adopted under chapter 36.70A RCW. The examination required by this section must commence by July 1, 2007.

(2) In fulfilling the requirements of this section, the center must: (a) Work and consult with willing participants including, but not limited to, agricultural, environmental, tribal, and local government interests; and (b) involve and apprise legislators and legislative staff of its efforts.

(3) The examination conducted by the center must be completed in two distinct phases in accordance with the following:

(a) In the first phase, the center must conduct fact-finding and stakeholder discussions with stakeholders identified in subsection (2) of this section. These discussions must identify stakeholder concerns, desired outcomes, opportunities, and barriers. The fact-finding must identify existing regulatory, management, and scientific information related to agricultural activities and critical areas including, but not limited to: (i) Critical area ordinances adopted under chapter 36.70A RCW; (ii) acreage enrolled in the conservation reserve enhancement program; (iii) acreage protected by conservation easements; (iv) buffer widths; (v) requirements of federally approved salmon recovery plans; (vi) the impacts of agricultural activities on Puget Sound recovery efforts; and (vii) compliance with water quality requirements. The center must issue two reports of its fact-finding efforts and stakeholder discussions to the governor and the appropriate committees of the house of representatives and the senate by December 1, 2007, and December 1, 2008; and

(b)(i) In the second phase, the center must facilitate discussions between the stakeholders identified in subsection (2) of this section to identify policy and financial options or opportunities to address the issues and desired outcomes identified by stakeholders in the first phase of the center's examination efforts.

(ii) In particular, the stakeholders must examine innovative solutions including, but not limited to, outcome-based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches. Additionally, stakeholders must examine ways to modify statutory provisions to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches.

(iii) The center must work to achieve agreement among participating stakeholders and to develop a coalition that can be used to support agreed upon changes or new approaches to protecting critical areas during the ~~((2010))~~ 2011 legislative session.

(4) The center must issue a final report of findings and legislative recommendations to the governor and the appropriate committees of the house of representatives and the senate by September 1, ~~((2009))~~ 2010.

Sec. 3. 2007 c 353 s 6 (uncodified) is amended to read as follows:

This act expires December 1, ~~((2011))~~ 2012."

Correct the title.

and the same are herewith transmitted.

FIFTY NINTH DAY, MARCH 10, 2010

BARBARA BAKER, Chief Clerk

MOTION

Senator Hatfield moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6520.

Senator Hatfield spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hatfield that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6520.

The motion by Senator Hatfield carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6520 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6520, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6520, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Haugen and McCaslin

SUBSTITUTE SENATE BILL NO. 6520, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

March 8, 2010

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 2776 and asks the Senate to recede therefrom.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator McAuliffe moved that the Senate recede from its position in the Senate amendment(s) to Substitute House Bill No. 2776.

The President declared the question before the Senate to be motion by Senator McAuliffe that the Senate recede from its position in the Senate amendment(s) to Substitute House Bill No. 2776.

The motion by Senator McAuliffe carried and the Senate receded from its position in the Senate amendment(s) to Substitute House Bill No. 2776 by voice vote.

MOTION

2010 REGULAR SESSION

On motion of Senator McAuliffe, the rules were suspended and Substitute House Bill No. 2776 was returned to second reading for the purposes of amendment.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2776, by House Committee on Education Appropriations (originally sponsored by Representatives Sullivan, Priest, Maxwell, Dammeier, Carlyle, Finn, Anderson, Eddy, Nelson, Goodman, Orwall, Hunter, Simpson, Jacks, Kagi, Ormsby, Morrell, Probst and Santos)

Regarding funding distribution formulas for K-12 education.

The measure was read the second time.

MOTION

Senator McAuliffe moved that the following striking amendment by Senator McAuliffe be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) It is the legislature's intent to continue implementation of chapter 548, Laws of 2009, by adopting the technical details of a new distribution formula for the instructional program of basic education. The legislature intends to continue to review and revise the formulas and may make revisions as necessary for technical purposes and consistency in the event of mathematical or other technical errors.

(2) The legislature further intends to adjust the timelines for the working groups created under chapter 548, Laws of 2009, so that their expertise and advice can be received as soon as possible and to make adjustments to the composition of the local finance working group. The legislature further intends to clarify the legislature's intent to fully fund all-day kindergarten by the 2018-19 school year.

Sec. 2. RCW 28A.150.315 and 2009 c 548 s 107 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. The funding shall continue to be phased-in until full statewide implementation of all-day kindergarten is achieved in the 2018-19 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) 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.

Sec. 3. 2009 c 548 s 302 (uncodified) is amended to read as follows:

(1) Beginning ~~((July))~~ April 1, 2010, the office of financial management, with assistance and support from the office of the superintendent of public instruction, shall convene a technical working group to develop options for a new system of supplemental school funding through local school levies and local effort assistance.

(2) The working group shall consider the impact on overall school district revenues of the new basic education funding system established ~~((under this act))~~ by the legislature based on prototypical schools and shall recommend a phase-in plan that ensures that no school district suffers a decrease in funding from one school year to the next due to implementation of the new system of supplemental funding.

(3) The working group shall also:

(a) Examine local school district capacity to address facility needs associated with phasing-in full-day kindergarten across the state and reducing class size in kindergarten through third grade;

(b) Provide technical advice to the quality education council including an analysis on the potential use of local funds that may become available for redeployment and redirection as a result of increased state funding allocations for pupil transportation and maintenance, supplies, and operating costs; and

(c) Advise the quality education council and the legislature on further development and implementation of the funding formulas under RCW 28A.150.260, as appropriate.

(4) The working group shall be composed of the following members:

(a) Four members of the house of representatives, with two members representing each of the major caucuses and appointed by the speaker of the house of representatives;

(b) Four members of the senate, with two members representing each of the major caucuses and appointed by the president of the senate; and

(c) Representatives from the department of revenue, the legislative evaluation and accountability program committee, school district and educational service district financial managers, and representatives of the Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with expertise in education finance. When choosing the individuals to serve on the working group, the office of financial management and the office of the superintendent of public instruction are encouraged to include, as appropriate, members of the funding formula technical working group convened in

accordance with section 112, chapter 548, Laws of 2009. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders. In addition to the staff support provided by the office of financial management and the office of the superintendent of public instruction, the department of revenue shall provide technical assistance, including financial and legal analysis, to support the working group's findings and analysis under subsection (3) of this section.

~~((4))~~ (5) The local funding working group shall be monitored and overseen by the legislature and by the quality education council created in ((section 114 of this act)) RCW 28A.290.010. The working group shall submit an initial report to the legislature ((December 1)) and the quality education council by November 30, 2010, and a final report by June 30, 2011.

Sec. 4. RCW 43.41.398 and 2009 c 548 s 601 are each amended to read as follows:

(1) The legislature recognizes that providing students with the opportunity to access a world-class educational system depends on our continuing ability to provide students with access to world-class educators. The legislature also understands that continuing to attract and retain the highest quality educators will require increased investments. The legislature intends to enhance the current salary allocation model and recognizes that changes to the current model cannot be imposed without great deliberation and input from teachers, administrators, and classified employees. Therefore, it is the intent of the legislature to begin the process of developing an enhanced salary allocation model that is collaboratively designed to ensure the rationality of any conclusions regarding what constitutes adequate compensation.

(2) Beginning July 1, 2011, the office of financial management in collaboration with the office of the superintendent of public instruction, shall convene a technical working group to recommend the details of an enhanced salary allocation model that aligns state expectations for educator development and certification with the compensation system and establishes recommendations for a concurrent implementation schedule. In addition to any other details the technical working group deems necessary, the technical working group shall make recommendations on the following:

(a) How to reduce the number of tiers within the existing salary allocation model;

(b) How to account for labor market adjustments;

(c) How to account for different geographic regions of the state where districts may encounter difficulty recruiting and retaining teachers;

(d) The role of and types of bonuses available;

(e) Ways to accomplish salary equalization over a set number of years; and

(f) Initial fiscal estimates for implementing the recommendations including a recognition that staff on the existing salary allocation model would have the option to grandfather in permanently to the existing schedule.

(3) As part of its work, the technical working group shall conduct or contract for a preliminary comparative labor market analysis of salaries and other compensation for school district employees to be conducted and shall include the results in any reports to the legislature. For the purposes of this subsection, "salaries and other compensation" includes average base salaries, average total salaries, average employee basic benefits, and retirement benefits.

(4) The analysis required under subsection (1) of this section must:

(a) Examine salaries and other compensation for teachers, other certificated instructional staff, principals, and other building-level certificated administrators, and the types of classified employees for whom salaries are allocated;

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(b) Be calculated at a statewide level that identifies labor markets in Washington through the use of data from the United States bureau of the census and the bureau of labor statistics; and

(c) Include a comparison of salaries and other compensation to the appropriate labor market for at least the following subgroups of educators: Beginning teachers and types of educational staff associates.

(5) The working group shall include representatives of the department of personnel, the professional educator standards board, the office of the superintendent of public instruction, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with appropriate expertise in compensation related matters. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(6) The working group shall be monitored and overseen by the legislature and the quality education council created in RCW 28A.290.010. The working group shall make an initial report to the legislature by December 1, 2012, and shall include in its report recommendations for whether additional further work of the group is necessary.

NEW SECTION. Sec. 5. A new section is added to chapter 28A.300 RCW to read as follows:

The office of the superintendent of public instruction shall implement and maintain an internet-based portal that provides ready public access to the state's prototypical school funding model for basic education under RCW 28A.150.260. The portal must provide citizens the opportunity to view, for each local school building, the staffing levels and other prototypical school funding elements that are assumed under the state funding formula. The portal must also provide a matrix displaying how individual school districts are deploying those same state resources through their allocation of staff and other resources to school buildings, so that citizens are able to compare the state assumptions to district allocation decisions for each local school building.

NEW SECTION. Sec. 6. The legislature intends to continue to refine and provide greater detail to the distribution formula for the basic education instructional allocation, which shall be based on minimum staffing and nonstaff costs that the legislature deems necessary to support instruction and operations in prototypical schools as defined by the legislature. The legislature expects that the detailed prototype school model will bring greater transparency, understanding, and public accountability to the funding system because it displays funding assumptions in understandable terms centered on the operations of school buildings.

Sec. 7. RCW 28A.150.260 and 2009 c 548 s 106 are each amended to read as follows:

The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2) The distribution formula under this section shall be for allocation purposes only. Except as may be required under chapter ~~28A.155~~, 28A.165, 28A.180, or ~~((28A.155))~~ 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section

requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has six hundred average annual full-time equivalent students in grades nine through twelve;

(ii) A prototypical middle school has four hundred thirty-two average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has four hundred average annual full-time equivalent students in grades kindergarten through six.

~~((e))~~ (4)(a) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on ~~((a))~~ the following general education average class size ~~((as specified in the omnibus appropriations act.))~~ of full-time equivalent students per teacher:

<u>General education average</u>	
<u>class size</u>	
<u>Grades K-3.....</u>	<u>25.23</u>
<u>Grade 4.....</u>	<u>27.00</u>
<u>Grades 5-6.....</u>	<u>27.00</u>
<u>Grades 7-8.....</u>	<u>28.53</u>
<u>Grades 9-12, except in cases when lower average class sizes</u>	
<u>are specified for approved career and technical education</u>	
<u>programs and skill centers.....</u>	<u>28.74</u>

(b) The minimum allocation for each prototypical middle and high school shall also provide for full-time equivalent classroom teachers based on the following number of full-time equivalent students per teacher in career and technical education:

Career and technical
education average
class size

Approved career and technical education offered at the middle school and high school level.....26.57
Skill center programs meeting the standards established by the office of the superintendent of public instruction.....22.76
 (c) According to an implementation schedule adopted by the legislature, the omnibus appropriations act shall at a minimum specify:

- (i) ~~((Basic average class size;~~
- ~~—(ii) Basic)) A high-poverty average class size in schools where more than fifty percent of the students are eligible for free and reduced-price meals; and~~
- ~~((iii)) (ii) A specialty average class size for ((exploratory and preparatory career and technical education,)) laboratory science, advanced placement, and international baccalaureate courses((; and~~
- ~~—(iv) Average class size in grades kindergarten through three)).~~
- ~~((4)) (5)(a) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:~~
 - ~~((i) Principals, including assistant principals, and other certificated building level administrators;~~
 - ~~—(ii) Teacher librarians, performing functions including information literacy, technology, and media to support school library media programs;~~
 - ~~—(iii) Student health services, a function that includes school nurses, whether certificated instructional or classified employee, and social workers;~~
 - ~~—(iv) Guidance counselors, performing functions including parent outreach and graduation advisor;~~
 - ~~—(v) Professional development coaches;~~
 - ~~—(vi) Teaching assistance, which includes any aspect of educational instructional services provided by classified employees;~~
 - ~~—(vii) Office support, technology support, and other noninstructional aides;~~
 - ~~—(viii) Custodians, warehouse, maintenance, laborer, and professional and technical education support employees; and~~
 - ~~—(ix) Classified staff providing student and staff safety.~~
- ~~—(4)(a))~~

	<u>Elementary School</u>	<u>Middle School</u>	<u>High School</u>
<u>Principals, assistant principals, and other certificated building-level administrators, except administrators for approved career and technical programs and skill centers</u>	<u>1.253</u>	<u>1.353</u>	<u>1.880</u>
<u>Teacher librarians, a function that includes information literacy, technology, and media to support school library media programs</u>	<u>0.663</u>	<u>0.519</u>	<u>0.523</u>
<u>Health and social services:</u>			
<u>School nurses</u>	<u>0.076</u>	<u>0.060</u>	<u>0.096</u>
<u>Social workers.....</u>	<u>0.042</u>	<u>0.006</u>	<u>0.015</u>
<u>Psychologists.....</u>	<u>0.017</u>	<u>0.002</u>	<u>0.007</u>
<u>Guidance counselors, a function that includes parent outreach and</u>	<u>0.493</u>	<u>1.116</u>	<u>1.909</u>

<u>graduation advising.....</u>			
<u>Professional development coaches.....</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<u>Teaching assistance, including any aspect of educational instructional services provided by classified employees</u>	<u>0.917</u>	<u>0.685</u>	<u>0.638</u>
<u>Office support and other noninstructional aides</u>	<u>1.971</u>	<u>2.277</u>	<u>3.201</u>
<u>Custodians.....</u>	<u>1.622</u>	<u>1.902</u>	<u>2.903</u>
<u>Classified staff providing student and staff safety.....</u>	<u>0.077</u>	<u>0.090</u>	<u>0.138</u>
<u>Parent involvement coordinators.....</u>	<u>0.000</u>	<u>0.000</u>	<u>0.000</u>

(b) For career and technical education programs approved by the superintendent of public instruction, the minimum allocation for administrative staff shall be allocated at 0.410 per one hundred full-time equivalent career and technical education students and for other school-level certificated staff at 0.202 per one hundred full-time equivalent career and technical education students, regardless of the grade level at which the program is delivered, in lieu of the certificated allocations in (a) of this subsection.

(c) For skill center programs meeting the standards for skill center funding established in January 1999 by the superintendent of public instruction, the minimum allocation for administrative staff shall be allocated at 0.490 per one hundred full-time equivalent skill center students and for other school-level certificated staff at 0.236 per one hundred full-time equivalent skill center students in lieu of the certificated allocations in (a) of this subsection.

(6)(a) The minimum staffing allocation for each school district to provide district-wide support services shall be allocated per one thousand full-time equivalent students in grades K-12 as follows:

<u>Staff per 1,000 K-12 students</u>	
<u>Technology.....</u>	<u>0.615</u>
<u>Facilities, maintenance, and grounds.....</u>	<u>1.776</u>
<u>Warehouse, laborers, and mechanics.....</u>	<u>0.325</u>

(b) The minimum allocation of staff units for each school district to support certificated and classified staffing of central administration shall be 5.39 percent of the staff units generated under subsections (4)(a) and (5)(a) of this section and (a) of this subsection.

(7)(a) Except as provided in subsection (8) of this section, the minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs: ~~((Student technology; utilities; curriculum, textbooks, library materials, and instructional supplies; instructional professional development for both certificated and classified staff; other building level costs including maintenance, custodial, and security; and central office administration.))~~

<u>Per annual average full-time equivalent student in grades K-12</u>	
<u>Technology.....</u>	<u>\$54.43</u>
<u>Utilities and insurance.....</u>	<u>\$147.90</u>
<u>Curriculum and textbooks.....</u>	<u>\$58.44</u>
<u>Other supplies and library materials.....</u>	<u>\$124.07</u>
<u>Instructional professional development for certified and classified staff.....</u>	<u>\$9.04</u>
<u>Facilities maintenance.....</u>	<u>\$73.27</u>

Security and central office.....\$50.76

(b) ~~((The annual average full-time equivalent student amounts in (a) of this subsection shall be enhanced))~~ According to an implementation schedule adopted by the legislature and in addition to the amounts provided in (a) of this subsection, the omnibus appropriations act shall provide an amount based on the full-time equivalent student enrollment ~~((in))~~ for each of the following: (i) Exploratory career and technical education courses for students in grades seven through twelve; (ii) laboratory science courses for students in grades nine through twelve; (iii) preparatory career and technical education courses for students in grades nine through twelve offered in a high school; and (iv) preparatory career and technical education courses for students in grades eleven and twelve offered through a skill center.

~~((5))~~ (8) In addition to the allocations otherwise provided under ~~((subsections (3) and (4) of))~~ this section ~~((shall be enhanced as follows to provide additional allocations for classroom teachers and maintenance, supplies, and operating costs))~~ amounts shall be provided to support the following programs and services:

(a) To provide supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the ~~((percent))~~ district percentage of students in ~~((each school))~~ grades K-12 who ~~((are))~~ were eligible for free ~~((and))~~ or reduced-price meals in the prior school year. The minimum allocation for the ~~((learning assistance))~~ program shall provide ~~((an extended school day and extended school year))~~ for each level of prototypical school ~~((and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 1.5156 hours per week in extra instruction with a class size of fifteen learning assistance program students per teacher and zero hours per week of instruction during vacation periods.

(b) To provide supplemental instruction and services for students whose primary language is other than English, allocations shall be based on the head count number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide ~~((for supplemental instruction based on percent of the school day a student is assumed to receive supplemental instruction and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 4.7780 hours per week in extra instruction with fifteen transitional bilingual instruction program students per teacher and zero hours per week of instruction during vacation periods.

~~((6))~~ The allocations provided under subsections (3) and (4) of this section shall be enhanced. (c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on two and three hundred fourteen one-thousandths percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide ~~((an extended school day and extended school year for each level of prototypical school and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher and zero hours per week of instruction during vacation periods.

~~((7))~~ (9) The allocations under subsections ~~((3)(b), (c)(i), and (d), (4), and (8))~~ (4)(a), (5)(a), (6), and (7)(a) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

~~((8))~~ The distribution formula shall include allocations to school districts to support certificated and classified staffing of central office administration. The minimum allocation shall be calculated as a percentage, identified in the omnibus appropriations act, of the total allocations for staff under subsections (3) and (6) of this section for all schools in the district.

~~((9))~~ (10)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (3) and ~~((5))~~ (8) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections ~~((3) and)~~ (4), (5), and (7) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

~~((10))~~ (11)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050.

Sec. 8. RCW 28A.505.210 and 2009 c 479 s 17 are each amended to read as follows:

School districts shall have the authority to decide the best use of funds distributed for the student achievement program under RCW 28A.505.220 to assist students in meeting and exceeding the new, higher academic standards in each district consistent with the provisions of chapter 3, Laws of 2001, except as provided in subsection (3) of this section.

(1) Funds shall be allocated for the following uses:

(a) To reduce class size by hiring certificated elementary classroom teachers in grades K-4 and paying nonemployee-related costs associated with those new teachers;

(b) To make selected reductions in class size in grades 5-12, such as small high school writing classes;

(c) To provide extended learning opportunities to improve student academic achievement in grades K-12, including, but not limited to, extended school year, extended school day, before-and-after-school programs, special tutoring programs, weekend school programs, summer school, and all-day kindergarten;

(d) To provide additional professional development for educators, including additional paid time for curriculum and lesson

redesign and alignment, training to ensure that instruction is aligned with state standards and student needs, reimbursement for higher education costs related to enhancing teaching skills and knowledge, and mentoring programs to match teachers with skilled, master teachers. The funding shall not be used for salary increases or additional compensation for existing teaching duties, but may be used for extended year and extended day teaching contracts;

(e) To provide early assistance for children who need prekindergarten support in order to be successful in school;

(f) To provide improvements or additions to school building facilities which are directly related to the class size reductions and extended learning opportunities under (a) through (c) of this subsection.

(2) Annually on or before May 1st, the school district board of directors shall meet at the time and place designated for the purpose of a public hearing on the proposed use of these funds to improve student achievement for the coming year. Any person may appear or by written submission have the opportunity to comment on the proposed plan for the use of these funds. No later than August 31st, as a part of the process under RCW 28A.505.060, each school district shall adopt a plan for the use of these funds for the upcoming school year. Annually, each school district shall provide to the citizens of their district a public accounting of the funds made available to the district during the previous school year under chapter 3, Laws of 2001, how the funds were used, and the progress the district has made in increasing student achievement, as measured by required state assessments and other assessments deemed appropriate by the district. Copies of this report shall be provided to the superintendent of public instruction.

(3) After the effective date of this section and until 2018, any funding for the student achievement program restored by the legislature shall be allocated in an amount of up to eighty percent of the funds to reduce class sizes in grades kindergarten through four or to assist with the continued phase-in of all-day kindergarten as specified in the omnibus appropriations act. These funds shall be considered part of the implementation plan for RCW 28A.150.260 and 28A.150.315 and only this portion of the student achievement program used to support these basic education components shall constitute basic education funding. The remaining funds provided for the student achievement program shall be allocated for the uses specified in subsection (1) of this section, shall not be considered part of basic education funding but in addition to basic education funding, and shall be distributed to school districts as specified in RCW 28A.505.220.

Sec. 9. RCW 28A.150.390 and 2009 c 548 s 108 are each amended to read as follows:

(1) The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.260 ~~((3)(b), (e)(i), and (d), (4), and (8) and federal medical assistance and private funds accruing under RCW 74.09.5249 through 74.09.5253 and 74.09.5254 through 74.09.5256)) (4)(a), (5)(a), (6), and (7)(a).~~

(2) The excess cost allocation to school districts shall be based on the following:

(a) A district's annual average headcount enrollment of students ages birth through four and those five year olds not yet enrolled in kindergarten who are eligible for and enrolled in special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.15; and

(b) A district's annual average full-time equivalent basic education enrollment, multiplied by the district's funded enrollment

percent, multiplied by the district's base allocation per full-time equivalent student, multiplied by 0.9309.

(3) As used in this section:

(a) "Base allocation" means the total state allocation to all schools in the district generated by the distribution formula under RCW 28A.150.260 ~~((3)(b), (e)(i), and (d), (4), and (8)) (4)(a), (5)(a), (6), and (7)(a),~~ to be divided by the district's full-time equivalent enrollment.

(b) "Basic education enrollment" means enrollment of resident students including nonresident students enrolled under RCW 28A.225.225 and students from nonhigh districts enrolled under RCW 28A.225.210 and excluding students residing in another district enrolled as part of an interdistrict cooperative program under RCW 28A.225.250.

(c) "Enrollment percent" means the district's resident special education annual average enrollment, excluding students ages birth through four and those five year olds not yet enrolled in kindergarten, as a percent of the district's annual average full-time equivalent basic education enrollment.

(d) "Funded enrollment percent" means the lesser of the district's actual enrollment percent or twelve and seven-tenths percent.

Sec. 10. RCW 28A.150.410 and 2007 c 403 s 1 are each amended to read as follows:

(1) The legislature shall establish for each school year in the appropriations act a statewide salary allocation schedule, for allocation purposes only, to be used to distribute funds for basic education certificated instructional staff salaries under RCW 28A.150.260. For the purposes of this section, the staff allocations for classroom teachers, teacher librarians, professional development coaches, guidance counselors, and student health services staff under RCW 28A.150.260 are considered allocations for certificated instructional staff.

(2) Salary allocations for state-funded basic education certificated instructional staff shall be calculated by the superintendent of public instruction by determining the district's average salary for certificated instructional staff, using the statewide salary allocation schedule and related documents, conditions, and limitations established by the omnibus appropriations act.

(3) Beginning January 1, 1992, no more than ninety college quarter- hour credits received by any employee after the baccalaureate degree may be used to determine compensation allocations under the state salary allocation schedule and LEAP documents referenced in the omnibus appropriations act, or any replacement schedules and documents, unless:

(a) The employee has a master's degree; or

(b) The credits were used in generating state salary allocations before January 1, 1992.

(4) Beginning in the 2007-08 school year, the calculation of years of service for occupational therapists, physical therapists, speech- language pathologists, audiologists, nurses, social workers, counselors, and psychologists regulated under Title 18 RCW may include experience in schools and other nonschool positions as occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers, counselors, or psychologists. The calculation shall be that one year of service in a nonschool position counts as one year of service for purposes of this chapter, up to a limit of two years of nonschool service. Nonschool years of service included in calculations under this subsection shall not be applied to service credit totals for purposes of any retirement benefit under chapter 41.32, 41.35, or 41.40 RCW, or any other state retirement system benefits.

Sec. 11. RCW 28A.150.100 and 1990 c 33 s 103 are each amended to read as follows:

(1) For the purposes of this section and RCW 28A.150.410 and 28A.400.200, "basic education certificated instructional staff"

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~~((shall))~~ means all full-time equivalent classroom teachers, teacher librarians, guidance counselors, certificated student health services staff, and other certificated instructional staff in the following programs as defined for statewide school district accounting purposes: Basic education, secondary vocational education, general instructional support, and general supportive services.

(2) ~~((In the 1988-89 school year and thereafter,))~~ Each school district shall maintain a ratio of at least forty-six basic education certificated instructional staff to one thousand annual average full time equivalent students.

Sec. 12. 2009 c 548 s 710 (uncodified) is amended to read as follows:

(1) RCW 28A.150.030 (School day) and 1971 ex.s. c 161 s 1 & 1969 ex.s. c 223 s 28A.01.010;

(2) RCW 28A.150.060 (Certificated employee) and 2005 c 497 s 212, 1990 c 33 s 102, 1977 ex.s. c 359 s 17, 1975 1st ex.s. c 288 s 21, & 1973 1st ex.s. c 105 s 1;

(3) ~~((RCW 28A.150.100 (Basic education certificated instructional staff. Definition--Ratio to students) and 1990 c 33 s 103 & 1987 1st ex.s. c 2 s 203;~~

~~---(4))~~ RCW 28A.150.040 (School year--Beginning--End) and 1990 c 33 s 101, 1982 c 158 s 5, 1977 ex.s. c 286 s 1, 1975-'76 2nd ex.s. c 118 s 22, & 1969 ex.s. c 223 s 28A.01.020;

~~((5))~~ (4) RCW 28A.150.370 (Additional programs for which legislative appropriations must or may be made) and 1995 c 335 s 102, 1995 c 77 s 5, 1990 c 33 s 114, 1982 1st ex.s. c 24 s 1, & 1977 ex.s. c 359 s 7; and

~~((6))~~ (5) RCW 28A.155.180 (Safety net funds--Application--Technical assistance--Annual survey) and 2007 c 400 s 8.

Sec. 13. 2009 c 548 s 804 (uncodified) is amended to read as follows:

Sections 101 through 105, 107 through 110, and 701 through 710 of this act take effect September 1, 2011.

NEW SECTION. Sec. 14. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. Sec. 15. 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. 16. Sections 6 through 14 of this act take effect September 1, 2011.

NEW SECTION. Sec. 17. Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Senators McAuliffe and King spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator McAuliffe to Substitute House Bill No. 2776.

The motion by Senator McAuliffe carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "education;" strike the remainder of the title and insert "amending RCW 28A.150.315, 43.41.398, 28A.150.260, 28A.505.210, 28A.150.390, 28A.150.410, and 28A.150.100; amending 2009 c 548 s 302 (uncodified); amending 2009 c 548 s 710 (uncodified); amending 2009 c 548 s 804 (uncodified); adding a new section to chapter 28A.300 RCW; creating new sections; providing an effective date; and declaring an emergency."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Substitute House Bill No. 2776 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McAuliffe spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2776 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2776 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Haugen and McCaslin

SUBSTITUTE HOUSE BILL NO. 2776 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SECOND READING

SENATE BILL NO. 6572, by Senator Tom

Eliminating certain accounts.

MOTIONS

On motion of Senator Tom, Substitute Senate Bill No. 6572 was substituted for Senate Bill No. 6572 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Tom, the rules were suspended, Substitute Senate Bill No. 6572 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Tom and Zarelli spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6572.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6572 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yeas: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator McCaslin

SUBSTITUTE SENATE BILL NO. 6572, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2224, by House Committee on Local Government & Housing (originally sponsored by Representative Simpson)

Concerning the installation of residential fire sprinkler systems.

The measure was read the second time.

MOTION

Senator Fairley moved that the following committee amendment by the Committee on Government Operations & Elections be adopted.

On page 4, beginning on line 1, strike all of section 4
Re-number the remaining sections consecutively.

On page 1, line 2 of the title, after "systems;" strike the remainder of the title and insert "amending RCW 18.160.050 and 82.02.100; adding a new section to chapter 70.119A RCW; and creating a new section."

POINT OF ORDER

Senator Honeyford: "Thank you Mr. President. I believe this bill is not properly before us. Senate Concurrent Resolution No. 8411, the cut off resolution states that Friday, March 5 was the final day to consider bills from the opposite house. Exceptions are made for bills necessary to implement the budget but it does not appear this bill qualifies. There's no reference in the Senate or the House version of the budget and neither budget relies on revenue from this bill so I submit this bills not properly before us and ask for a ruling thereon."

MOTION

On motion of Senator Eide, further consideration of Substitute House Bill No. 2224 was deferred and the bill held its place on the second reading calendar.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Fraser moved that Gubernatorial Appointment No. 9240, Larry E. Swift, as a member of the Board of Trustees, State School for the Deaf, be confirmed.

Senator Fraser spoke in favor of the motion.

MOTION

On motion of Senator Marr, Senator Oemig was excused.

APPOINTMENT OF LARRY E. SWIFT

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9240, Larry E. Swift as a member of the Board of Trustees, State School for the Deaf.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9240, Larry E. Swift as a member of the Board of Trustees, State School for the Deaf and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yeas: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators McCaslin and Oemig

Gubernatorial Appointment No. 9240, Larry E. Swift, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, State School for the Deaf.

MOTION

On motion of Senator Marr, Senator Prentice was excused.

SECOND READING

SUBSTITUTE SENATE BILL NO. 5899, by Senate Committee on Ways & Means (originally sponsored by Senators Kilmer, Franklin, Kastama, Shin, Marr, McAuliffe, Haugen, Brown, Berkey, Prentice, Fairley, Regala, Keiser, Eide, Rockefeller, Murray, Hatfield, Hargrove, Sheldon, Oemig and Kline)

Providing a business and occupation tax credit for qualified employment positions.

The measure was read the second time.

MOTION

Senator Kastama moved that the following amendment by Senators Kastama and Kilmer be adopted.

On page 1, line 8, after "section.", insert "New qualified employment positions filled by a new hire are not eligible for the credit under this section if the new hire has been, during the twelve months preceding the date of hire, an independent contractor providing essentially the same work for which they are hired. Persons claiming the credit must maintain records

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sufficient to show that the eligibility requirement in this section has been complied with."

WITHDRAWAL OF AMENDMENT

On motion of Senator Kastama, the amendment by Senators Kastama and Kilmer on page 1, line 8 to Substitute Senate Bill No. 5899 was withdrawn.

MOTION

Senator Kastama moved that the following amendment by Senators Kastama and Kilmer be adopted.

On page 1, line 8, after "section.", insert "New qualified employment positions filled by a new hire are not eligible for the credit under this section if the new hire has been, during the twelve months preceding the date of hire, an independent contractor providing essentially the same work to the eligible business by which they are hired. Persons claiming the credit must maintain records sufficient to show that the eligibility requirement in this section has been met."

Senator Kastama spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Kastama and Kilmer on page 1, line 8 to Substitute Senate Bill No. 5899.

The motion by Senator Kastama carried and the amendment was adopted by voice vote.

MOTION

Senator Kilmer moved that the following amendment by Senator Kilmer and others be adopted.

On page 2, line 19, after "exceed" strike "five" and insert "ten"

On page 4, line 8, after "with" strike "ten" and insert "twenty"

On page 5, line 8, after "June 30," strike "2011" and insert "2012"

On page 5, after line 12, insert the following:

"**NEW SECTION. Sec. 3.** This act takes effect July 1, 2010."

Senator Kilmer spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Kilmer and others on page 2, line 19 to Substitute Senate Bill No. 5899.

The motion by Senator Kilmer carried and the amendment was adopted by voice vote.

MOTION

Senator Kilmer moved that the following amendment by Senators Kilmer and Zarelli be adopted.

On page 3, after line 32, strike all of subsections (10) and (11) and insert the following:

"(10) The employment security department must provide to the department of revenue such information needed for the department of revenue to certify all determinations of employment and wages.

(11) Applications, reports, and any other information received by the department under this section are subject to disclosure to the extent disclosure is not otherwise prohibited by state or federal law."

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

Senator Kilmer spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Kilmer and Zarelli on page 3, after line 32 to Substitute Senate Bill No. 5899.

The motion by Senator Kilmer carried and the amendment was adopted by voice vote.

MOTION

On motion of Senator Kilmer, the rules were suspended, Engrossed Substitute Senate Bill No. 5899 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kilmer spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5899.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5899 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators McCaslin and Prentice

ENGROSSED SUBSTITUTE SENATE BILL NO. 5899, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 6:50 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

EVENING SESSION

The Senate was called to order at 7:23 p.m. by President Owen.

MOTION

At 7:23 p.m., on motion of Senator McDermott, the Senate adjourned until 9:30 a.m. Thursday, March 11, 2010.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

Draft

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