

FIFTY SEVENTH DAY

MORNING SESSION

Senate Chamber, Olympia, Monday, March 5, 2012

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 Benton, Carrell, Chase, Harper, McAuliffe, Plug and Prentice.

The Sergeant at Arms Color Guard consisting of Pages Murray Stromberg and Victoria Morales, presented the Colors. Pastor Eric Wilson Weiberg of Ballard First Lutheran Church of Seattle 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

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

MESSAGE FROM THE HOUSE

March 3, 2012

MR. PRESIDENT:

The House concurred in the Senate amendments to the following bills and passed the bills as amended by the Senate:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2048,

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2319,

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2582,

SUBSTITUTE HOUSE BILL NO. 2617,

SUBSTITUTE HOUSE BILL NO. 2673,

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2692,

ENGROSSED HOUSE BILL NO. 2771.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

MOTION

On motion of Senator Frockt, Senators Brown and Harper were excused.

MOTION

On motion of Senator Fain, Senators Becker, Benton, Carrell, Ericksen, Hewitt, Parlette, Pflug and Zarelli were excused.

MOTION

On motion of Senator Eide, Senator Prentice was excused.

SECOND READING

CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Kline moved that Gubernatorial Appointment No. 9160, Stuart Halson, as a member of the Board of Trustees, Centralia Community College District No. 12, be confirmed.

Senators Kline, Schoesler and Roach spoke in favor of passage of the motion.

APPOINTMENT OF STUART HALSON

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9160, Stuart Halson as a member of the Board of Trustees, Centralia Community College District No. 12.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9160, Stuart Halson as a member of the Board of Trustees, Centralia Community College District No. 12 and the appointment was confirmed by the following vote: Yeas, 41; Nays, 1; Absent, 2; Excused, 5.

Voting yea: Senators Becker, Brown, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, Morton, Murray, Nelson, Padden, Parlette, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Baumgartner

Absent: Senators Chase and McAuliffe

Excused: Senators Benton, Carrell, Harper, Pflug and Prentice

Gubernatorial Appointment No. 9160, Stuart Halson, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Centralia Community College District No. 12.

MOTION

On motion of Senator Eide, Senators Chase and McAuliffe were excused.

PERSONAL PRIVILEGE

Senator Sheldon: "Well, thank you Mr. President. Now that March Madness has begun and I don't mean here in the Senate, I mean in the NCAA Tournament. As a UW alum, I want to be the first to rise and congratulate the Pac 10 Champion basketball team of our new league, the Pac 10 as the University Washington Huskies. And also to say of course they did win the Pac 10 outright in 2009 and then previously in 1953. So, it's quite an event for the team to win the championship this year. We're looking forward to the Pac 10 tournament and the NCAA tournament and good luck to the Huskies. 'Go Dawgs.'"

REPLY BY THE PRESIDENT

President Owen: "That would be to Pac 12, Senator."

PERSONAL PRIVILEGE

Senator Shin: "I feel so blessed and happy today. 1955 I was adopted, came to this country alone and many, many years later I went back to Korea. I found my father who had abandoned me and he had five children by a second marriage and having hard time to go to school. So I invited all of them to the United States, educated here. Yesterday, my nephew whose name is Paull Shin also, the son of a second brother, he has volunteered in the Marine Corps and I saw him at the train station leaving for San Diego. It was a very proud moment. I was a ... He decided to serve his country in the Marine Corps. I thought I would share this with you, thank you Mr. President."

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Fain moved that Gubernatorial Appointment No. 9187, Thomas Campbell, as a member of the Board of Trustees, Green River Community College District No. 10, be confirmed.

Senator Fain spoke in favor of the motion.

APPOINTMENT OF THOMAS CAMPBELL

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9187, Thomas Campbell as a member of the Board of Trustees, Green River Community College District No. 10.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9187, Thomas Campbell as a member of the Board of Trustees, Green River Community College District No. 10 and the appointment was confirmed by the following vote: Yeas, 42; Nays, 1; Absent, 0; Excused, 6.

Voting yea: Senators Becker, Brown, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, Morton, Murray, Nelson, Padden, Parlette, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Baumgartner

Excused: Senators Benton, Carrell, Harper, McAuliffe, Pflug and Prentice

Gubernatorial Appointment No. 9187, Thomas Campbell, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Green River Community College District No. 10.

MOTION

On motion of Senator Fraser, Senator Eide was excused.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Pridemore moved that Gubernatorial Appointment No. 9222, Royce Pollard, as a member of the Board of Trustees, Clark Community College District No. 14, be confirmed.

Senators Pridemore and Benton spoke in favor of the motion.

APPOINTMENT OF ROYCE POLLARD

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9222, Royce Pollard as a member of the Board of Trustees, Clark Community College District No. 14.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9222, Royce Pollard as a member of the Board of Trustees, Clark Community College District No. 14 and the appointment was confirmed by the following vote: Yeas, 44; Nays, 1; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Brown, Chase, Conway, Delvin, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Baumgartner

Excused: Senators Carrell, Eide, Harper and Prentice

Gubernatorial Appointment No. 9222, Royce Pollard, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Clark Community College District No. 14.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced Colonel Ed Drummond; Captain George Hickman; and Airman George Miller, original members of the "Tuskegee Airmen" and Mr. Tommie Lamb, President of the Sam Bruce Chapter of the Tuskegee Airmen, Inc., who were seated at the rostrum. The "Tuskegee Airmen" were the first African Americans to fly and maintain combat aircraft during World War II. Previously denied military leadership roles and skilled training, the 332<sup>nd</sup> and other Fighter Groups, trained in Tuskegee, Alabama by the U. S. Army Air Corps program that has become known as the "Tuskegee Experience," went on to become one of the most highly respected fighter groups of the war, paving the way for full integration of the U. S. military.

With permission of the Senate, business was suspended to allow Colonel Ed Drummond and Mr. Tommie Lamb to address the Senate.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced Mrs. Alberta Drummond, wife of Colonel Drummond and son, Mr. Michael Drummond; Mrs. Dorothy Hickman, wife of Captain Hickman; and Ms. Hydarose Miller, daughter of Airman Miller accompanied by Mrs. Brad Owen and visit organizer, Ms. Tracey Lundquist, daughter of former Representative Homer Lundquist and teacher at Tyee Park Elementary School in Lakewood and a Golden Apple Award winner, who were all present in the gallery.

REMARKS BY COLONEL ED DRUMMOND

Colonel Drummond: "First off, I'd like to say, express my thanks for the opportunity to speak in the Senate of the State of Washington. We came to Washington by way of the military in 1961. We're Pennsylvanians, my wife, of sixty-three years, Alberta, and myself and our family, Michael's our son, up there. We were adopted by Washington and I always challenged those who were born and raised here to take off their shoes because I have web feet just like they have and that's one thing you get when you get here. But we're really blessed and we thank you for the privilege, for taking some of your valuable time and want to express our thanks for what you're trying to do for the state. We

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

realize that you work hard at what you're doing. Everybody is not always in agreement of things but you come to a rationalization which is beneficial to us in the state and we appreciate the job that you do and we appreciate you letting us just take a few minutes. Thank you very much."

REMARKS BY MR. TOMMIE LAMB

Mr. Lamb: "Good morning. I came from a little town in Mississippi and no way on God's green earth that anybody from Mississippi during my time would be standing in the State Legislature. So, I'm very proud to be here this morning and I want to thank you for taking your time out to welcome us. The Tuskegee Airmen, we're trying to just tell the story, what was done and what was not done. We look forward to working with the state and with the people of the state of Washington to prove things much better for the kids that are coming along now. You can imagine the school I went to in Mississippi was inferior from the beginning to the end and the only way you could improve yourself was to get out of the state of Mississippi in the 1950s. And like I said my mother and father they would be so proud of me to see me standing this place because it was never believed that we would ever be anything because nothing was planned to be anything. So, again I would just like to thank you and welcome you to come to our meetings. We have meetings on the last Friday of every month at the Museum of Flight where we discuss different programs that we try to encourage young people, continue their education and especially those who are interested in going to Aaronic Engineering and math and science. So, you're always welcome to come to my meetings and I hope that my members will give you the same warm welcome that you have here on us this morning. Thank you very much."

REMARKS BY THE PRESIDENT

President Owen: "Following our little time here, we are going to make a little jaunt over to the House of Representatives for a minute and then they will be in my office if people would like to come by for pictures and just say hello and pay their respects to these incredible, incredible heroes of America. That will go until about 12:30 and then I will shut the door so they can have lunch. So, thank you all for allowing us this time to meet these incredible gentlemen. Thank you very much and thank you all for being here with us today."

MOTION

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

Senator Shin assumed the chair.

MOTION

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

MOTION

At 10:16 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 11:05 a.m. by President Owen.

MOTION

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

MOTION

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

MESSAGE FROM THE HOUSE

March 3, 2012

MR. PRESIDENT:

The House has passed:

SUBSTITUTE SENATE BILL NO. 6444.  
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

SECOND READING

SENATE BILL NO. 6406, by Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker and Shin

Modifying programs that provide for the protection of the state's natural resources.

MOTION

On motion of Senator Hargrove, Substitute Senate Bill No. 6406 was substituted for Senate Bill No. 6406 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Hargrove moved that the following striking amendment by Senators Hargrove and Schoesler be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that significant opportunities exist to modify programs that provide for management and protection of the state's natural resources, including the state's forests, fish, and wildlife, in order to streamline regulatory processes and achieve program efficiencies while at the same time increasing the sustainability of program funding and maintaining current levels of natural resource protection. The legislature intends to update provisions relating to natural resource management and regulatory programs including the hydraulic project approval program, forest practices act, and state environmental policy act, in order to achieve these opportunities.

PART ONE

Hydraulic Project Approvals

**Sec. 101.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

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

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches,

canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) "Commission" means the state fish and wildlife commission.

(4) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

(5) "Department" means the department of fish and wildlife.

(6) "Director" means the director of the department of fish and wildlife.

(7) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(8) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(9) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(10) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(11) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

(12) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining freshwater is the elevation of the mean annual flood.

(13) "Permit" means a hydraulic project approval permit issued under this chapter.

(14) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

(15) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

(16) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(17) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

(18) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(19) "Waters of the state" and "state waters" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

(20) "Emergency permit" means a verbal hydraulic project approval or the written follow-up to the verbal approval issued to a person under RCW 77.55.021(12).

(21) "Expedited permit" means a hydraulic project approval issued to a person under RCW 77.55.021 (14) and (16).

(22) "Forest practices hydraulic project" means a hydraulic project that requires a forest practices application or notification under chapter 76.09 RCW.

(23) "General permit" means a hydraulic project approval issued to a person under RCW 77.55.021 for multiple hydraulic projects that: (a) Involve repair or maintenance activities; and (b) occur over a defined geographic area, but for which specific project sites have not been designated.

(24) "Multiple site permit" means a hydraulic project approval issued to a person under RCW 77.55.021 for hydraulic projects occurring at more than one specific location and which includes site-specific requirements.

(25) "Pamphlet hydraulic project" means a hydraulic project for the removal or control of aquatic noxious weeds conducted under the aquatic plants and fish pamphlet authorized by RCW 77.55.081, or for mineral prospecting and mining conducted under the gold and fish pamphlet authorized by RCW 77.55.091.

(26) "Permit modification" means a hydraulic project approval issued to a person under RCW 77.55.021 that extends, renews, or changes the conditions of a previously issued hydraulic project approval.

(27) "Repair or maintenance" means the care and upkeep of existing structures.

**Sec. 102.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~ 77.55.041, and section 201 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

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

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

(e) Payment of all applicable application fees charged by the department under section 103 of this act.

(3) The department may establish direct billing accounts or other funds transfer methods with permit applicants to satisfy the fee payment requirements of section 103 of this act.

(4) The department may accept complete, written applications as provided in this section for multiple site permits and general permits and may issue these permits. For multiple site permits, each specific location must be identified.

(5) With the exception of emergency permits as provided in subsection (12) of this section, applications for permits must be submitted to the department's headquarters office in Olympia. Requests for emergency permits as provided in subsection (12) of this section may be made to the permitting biologist assigned to the location in which the emergency occurs, to the department's regional office in which the emergency occurs, or to the department's headquarters office.

(6) Except as provided for emergency permits in subsection (12) of this section, the department may not proceed with permit review until all fees are paid in full as required in section 103 of this act.

(7)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

~~(b)~~ Except as provided in this subsection and subsections ~~((8), (10), and)~~ (12) through (14) and (16) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

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

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

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

~~((4))~~ (8) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

~~((5))~~ (9)(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

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

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

~~((6))~~ (10) The department may, after consultation with the permittee, modify a permit due to changed conditions. A modification under this subsection is not subject to the fees provided under section 103 of this act. The modification is appealable as provided in subsection ~~((4))~~ (8) of this section. For a hydraulic project(s) that diverts water for agricultural irrigation or stock watering purposes, ~~((e))~~ when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

~~((7))~~ (11) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request and payment of applicable fees under section 103 of this act. A decision by the department is appealable as provided in subsection ~~((4))~~ (8) of this section. For a hydraulic project(s) that diverts water for agricultural irrigation or stock watering purposes, ~~((e))~~ when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

~~((8))~~ (12)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

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

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

~~((9))~~ (d) The department may not charge a person requesting an emergency permit any of the fees authorized by section 103 of this act until after the emergency permit is issued and reduced to writing.

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

~~((10))~~ (14) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

~~((11))~~ (15)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to

abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and ~~((3))~~ (7) of this section.

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

~~((2))~~ (16) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

**NEW SECTION. Sec. 103.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The department shall charge an application fee of one hundred fifty dollars for a hydraulic project permit or permit modification issued under RCW 77.55.021 where the project is located at or below the ordinary high water line. The application fee established under this subsection may only be charged after June 30, 2012, if section 104 of this act has been enacted into law by that date.

(2) The following hydraulic projects are exempt from all fees listed under this section:

(a) Hydraulic projects approved under applicant-funded contracts with the department that pay for the costs of processing those projects;

(b) If sections 201 through 203 of this act are enacted into law by June 30, 2012, forest practices hydraulic projects;

(c) Pamphlet hydraulic projects; and

(d) Mineral prospecting and mining activities.

(3) All fees collected under this section must be deposited in the hydraulic project approval account created in section 105 of this act.

(4) The fee provisions contained in this section are prospective only. The department of fish and wildlife may not charge fees for hydraulic project permits issued under this title prior to the effective date of this section.

**NEW SECTION. Sec. 104.** (1) The University of Washington, through colleges and schools with relevant subject matter expertise, shall conduct a review of state, federal, and local natural resources, environmental, and other regulatory programs to:

(a) Identify programs that regulate construction or the performance of work conducted above the ordinary high water line;

(b) Identify construction activities or the performance of work conducted above the ordinary high water line that potentially use, divert, or change the natural flow or bed of any of the salt or freshwaters of the state;

(c) Analyze the manner and degree to which the activities identified in (b) of this subsection are regulated under the programs identified in (a) of this subsection;

(d) Using the analysis under (c) of this subsection, identify any regulatory gaps that may exist in providing for the protection of fish life for activities identified in (b) of this subsection that use, divert, or change the natural flow or bed of any of the salt or freshwaters of the state; and

(e) Identify the scale of the potential risk to fish life from any regulatory gaps identified in (d) of this subsection.

(2) The University of Washington shall conduct the review in consultation with appropriate federal and state agencies, local governments, tribal governments, and business and environmental interests. The University of Washington shall consult with and solicit input from these entities both: (a) Through a forum gathering the stakeholders together at the onset of the review to discuss matters including the scope and timeline of the study; and (b) throughout the review process. The University of Washington shall include a summary of their comments on the outcomes of the review process in the report required under subsection (3) of this section.

(3) The University of Washington shall submit a report detailing the review to the appropriate standing committees of the senate and house of representatives consistent with RCW 43.01.036 by September 1, 2014.

(4) This section expires January 1, 2015.

**NEW SECTION. Sec. 105.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The hydraulic project approval account is created in the state treasury. All receipts from application fees for hydraulic project approval applications collected under section 103 of this act must be deposited into the account.

(2) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the hydraulic project approval account may be spent only after appropriation.

(3) Expenditures from the hydraulic project approval account may be used only to fund department activities relating to implementing and operating the hydraulic project approval program.

**Sec. 106.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to read as follows:

(1) ((For a marina or marine terminal in existence on June 6, 1996, or a marina or marine terminal that has received a permit for its initial construction, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(2) Upon construction of a new marina or marine terminal that has received a permit, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(3) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina or marine terminal to the conditions approved in the initial permit. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.

(4)) Upon application under RCW 77.55.021, the department shall issue a renewable, five-year general permit to a marina or marine terminal for its regular maintenance activities identified in the application.

(2) For the purposes of this section, regular maintenance activities may include, but are not limited to:

(a) Maintenance, repair, or replacement of a boat ramp, launch, or float within the existing footprint;

(b) Maintenance or repair of an existing overwater structure within the existing footprint;

(c) Maintenance or repair of boat lifts or railway launches;

(d) New, maintenance, or removal of pilings;

(e) Dredging of less than fifty cubic yards;

(f) Maintenance or repair of shoreline armoring or bank protection;

(g) Maintenance or repair of wetland, riparian, or estuarine habitat; and

(h) Maintenance or repair of an existing outfall.

(3) The five-year permit must include a requirement that a

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

fourteen-day notice be given to the department before regular maintenance activities begin.

(4) A permit under this section is subject to the application fee provided in section 103 of this act.

**Sec. 107.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to read as follows:

(1) Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(2) The permit must contain provisions allowing for minor modifications to the plans and specifications without requiring reissuance of the permit.

(3) The permit must contain provisions that allow for minor modifications to the required work timing without requiring the reissuance of the permit. "Minor modifications to the required work timing" means a minor deviation from the timing window set forth in the permit when there are no spawning or incubating fish present within the vicinity of the project.

**NEW SECTION. Sec. 108.** A new section is added to chapter 77.55 RCW to read as follows:

The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of this chapter, including the changes resulting from this act.

**NEW SECTION. Sec. 109.** A new section is added to chapter 77.55 RCW to read as follows:

The department shall develop a system to provide local governments, affected tribes, and other interested parties with access to hydraulic project approval applications, including applications for a general permit.

**NEW SECTION. Sec. 110.** The director of fish and wildlife shall adopt any rules required or deemed necessary to implement RCW 77.55.011, 77.55.021, 77.55.151, 77.55.231, and sections 103 through 105, 108, and 109 of this act.

## PART TWO

### Hydraulic Project

#### Approval and Forest Practices Integration

**NEW SECTION. Sec. 201.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The requirements of this chapter do not apply to any forest practices hydraulic project, or to any activities that are associated with such a project, upon incorporation of fish protection standards adopted under this chapter into the forest practices rules and approval of technical guidance as required under RCW 76.09.040, at which time these projects are regulated under chapter 76.09 RCW.

(2) The department must continue to conduct regulatory and enforcement activities under this chapter for forest practices hydraulic projects until the forest practices board incorporates fish protection standards adopted under this chapter into the forest practices rules and approves technical guidance as required under RCW 76.09.040.

(3) By December 31, 2013, the department shall adopt rules establishing the form and procedures for the concurrence review process consistent with section 202 of this act. The concurrence review process must allow the department up to thirty days to review forest practices hydraulic projects meeting the criteria under section 202(2) (a) and (b) of this act for consistency with fish protection standards.

(4) The department shall notify the department of natural resources prior to beginning a rule-making process that may affect activities regulated under chapter 76.09 RCW.

(5) The department shall act consistent with appendix M of the forest and fish report, as the term "forests and fish report" is defined in RCW 76.09.020, when modifying fish protection rules that may affect activities regulated under chapter 76.09 RCW.

(6) The department may review and provide comments on any forest practices application. Prior to commenting and whenever reasonably practicable, the department shall communicate with the applicant regarding the substance of the project.

(7) The department shall participate in effectiveness monitoring for forest practices hydraulic projects through its role in the review processes provided under WAC 222-08-160 as it existed on the effective date of this section.

**NEW SECTION. Sec. 202.** A new section is added to chapter 76.09 RCW to read as follows:

(1) The department may request information and technical assistance from the department of fish and wildlife regarding any forest practices hydraulic project regulated under this chapter.

(2) A concurrence review process is established for certain forest practices hydraulic projects, as follow:

(a) Prior to submitting an application to the department under RCW 76.09.050 that includes a forest practices hydraulic project involving one or more water crossing structures meeting the criteria of (b) of this subsection, the applicant shall submit water crossing structure plans and specifications to the department of fish and wildlife for concurrence review consistent with section 201(3) of this act.

(b) The concurrence review process applies only to:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on the effective date of this section, in fish bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish bearing unconfined streams; or

(iii) Fill within the flood level - 100 year, as that term is defined in WAC 222-16-010, as it existed on the effective date of this section, of fish bearing unconfined streams.

(c) When submitting an application to the department under RCW 76.09.050, the applicant shall attach the following to the application:

(i) The concurrence review form issued by the department of fish and wildlife; and

(ii) Plans and specifications for each water crossing structure subject to concurrence review.

**Sec. 203.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect ~~((hereto))~~ to these rules. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

(b)(i) ((Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection.

(ii) After the expiration of the thirty day period.)) The board ((and the department of ecology)) shall ((jointly)) hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

~~((iii))~~ (ii) The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date of this section, that are applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(b) Thereafter, the board shall incorporate into the forest practices rules any changes to those fish protection standards in the rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent with section 201 of this act; and (ii) applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(c) The board shall establish and maintain technical guidance in the forest practices board manual, as provided under WAC 222-12-090 as it existed on the effective date of this section, to assist with implementation of the standards incorporated into the forest practices rules under this section. The guidance must include best management practices and standard techniques to ensure fish protection.

(d) The board must complete the requirements of (a) of this subsection and establish initial technical guidance under (c) of this subsection by December 31, 2013.

(4)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest

lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

NEW SECTION. Sec. 204. A new section is added to chapter 77.55 RCW to read as follows:

(1) The department and the department of natural resources shall enter into and maintain a memorandum of agreement between the two agencies that describes how to implement integration of hydraulic project approvals into forest practices applications consistent with this act.

(2) The initial memorandum of agreement between the two departments must be executed by December 31, 2012. The

FIFTY SEVENTH DAY, MARCH 5, 2012

memorandum of agreement may be amended as agreed to by the two departments.

**Sec. 205.** RCW 76.09.050 and 2011 c 207 s 1 are each amended to read as follows:

(1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On forest lands that are being converted to another use;

(b) ((Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

(c)) Within "shorelines of the state" as defined in RCW 90.58.030;

((#)) (c) Excluded from Class II by the board; or

((#)) (d) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II:

(a) On forest lands that are being converted to another use;

(b) On lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development;

(c) That involve timber harvesting or road construction on forest lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application; and/or

(d) Which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing

2012 REGULAR SESSION

herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, ~~((unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period))~~ except that the department must: Approve or disapprove an application within sixty calendar days from the date the department receives the application if the department determines that a detailed statement must be made, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such a period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED,

FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days (~~(=) PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section~~). Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to forest lands that are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to (b) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for

exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected.

**Sec. 206.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practices application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) For an application or notification submitted on or after the effective date of section 202 of this act that includes a forest practices hydraulic project, plans and specifications for the forest practices hydraulic project to ensure the proper protection of fish life;

(g) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

~~((g))~~ (h) Soil, geological, and hydrological data with respect to forest practices;

~~((h))~~ (i) The expected dates of commencement and completion of all forest practices specified in the application;

~~((i))~~ (j) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

~~((j))~~ (k) An affirmation that the statements contained in the notification or application are true; and

~~((k))~~ (l) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to the department of ecology and the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6)(a) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of ~~((two))~~ three years from the date of approval or notification ~~((and shall not be renewed unless a new application is filed and approved or a new notification has been filed))~~.

(b) A notification or application may be renewed for an additional three-year term by the filing and approval of a notification or application, as applicable, prior to the expiration of the original application or notification. A renewal application or notification is subject to the forest practices rules in effect at the time the renewal application or notification is filed. Nothing in this section precludes the applicant from applying for a new application or notification after the renewal period has lapsed.

(c) At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than ~~((two))~~ three years.

(d) The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than ~~((two))~~ three years. Such rules shall include extended time periods for application or notification approval or disapproval. ~~((On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations))~~ The department may require the applicant to provide advance notice before commencing operations on an approved application or notification.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 207.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during, and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter ~~((and))~~, the forest practices rules, including forest practices rules incorporated under RCW 76.09.040(3), and to ensure that no material damage occurs to the natural resources of this state as a result of ~~((such))~~ forest practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**NEW SECTION. Sec. 208.** A new section is added to chapter 43.30 RCW to read as follows:

(1) By December 31, 2013, the department must make examples of complete, high quality forest practices applications and the resulting approvals readily available to the public on its internet site, as well as the internet site of the office of regulatory assistance established in RCW 43.42.010. The department must maximize assistance to the public and interested parties by seeking to make readily available examples from forest practices that generate significant permitting activity or frequent questions.

(2) The department must regularly review and update the examples required to be made available on the internet under subsection (1) of this section.

(3) The department must obtain the written permission of an applicant before making publicly available that applicant's application or approval under this section and must work cooperatively with the applicant to ensure that no personal or proprietary information is made available.

**Sec. 209.** RCW 76.09.065 and 2000 c 11 s 5 are each amended to read as follows:

(1) ~~((Effective July 1, 1997,))~~ An applicant shall pay an application fee ~~((and a recording fee))~~, if applicable, at the time an

application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

~~(2) ((For applications and notifications submitted to the department, the application fee))~~ (a) If sections 201 through 203 and 206 of this act are not enacted into law by June 30, 2012, then the fee for applications and notifications submitted to the department shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:

~~((a))~~ (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

~~((b))~~ (ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(b)(i) If sections 201 through 203 and 206 of this act are enacted into law by June 30, 2012, then the fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred fifty dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. The fee shall be one thousand five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands that are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except the fee shall be the same as for a class III forest practices application where the forest landowner provides:

(A) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(B) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(ii) If the board has not incorporated fish protection standards adopted under chapter 77.55 RCW into the forest practices rules and approved technical guidance as required under RCW 76.09.040 by December 31, 2013, the fee for applications and notifications submitted to the department shall be as provided under (a) of this subsection until the rules are adopted and technical guidance approved.

(3) The forest practices application account is created in the state treasury. Moneys in the account may be spent only after appropriation. All money collected from fees under ~~((this))~~ subsection (2) of this section shall be deposited in the ~~((state general fund))~~ forest practices application account for the purposes of implementing this chapter, chapter 76.13 RCW, and Title 222 WAC.

~~((3))~~ (4) For applications submitted to ~~((the))~~ a local governmental entity as provided in this chapter, the fee shall be ~~((five hundred dollars for class IV forest practices on lands being~~

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided)) determined, collected, and retained by the local governmental entity.

((4) Recording fees shall be as provided in chapter 36.18 RCW.

(5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department.)

**Sec. 210.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the department of ecology and the applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department ~~((and))~~, withdraw any applicable applications or notifications ((or request)), and submit a new application for the conversion. The fee for a new application for conversion under this subsection (1)(c) is the difference between the applicable fee for the new application under RCW 76.09.065 and the fee previously paid for the original application or notification, which must be deposited in the forest practices application account created in RCW 76.09.065.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

**Sec. 211.** RCW 76.09.030 and 2008 c 46 s 1 are each amended to read as follows:

(1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of ~~((community, trade, and economic development))~~ commerce or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor ~~((PROVIDED, That such))~~, However, the county member's service on the board shall be conditioned on the member's continued service as an elected county official;

(g) One member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(2) ~~((The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter 77.55 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.~~

(3) ~~((The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chair of the board.~~

~~((4))~~ (3) The board shall meet at such times and places as shall be designated by the chair or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

~~((5))~~ (4) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

~~((6))~~ (5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

**Sec. 212.** RCW 76.09.020 and 2010 c 210 s 19 and 2010 c 188 s 6 are each reenacted and amended to read as follows:

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

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

(2) "Appeals board" means the pollution control hearings board created by RCW 43.21B.010.

(3) "Application" means the application required pursuant to RCW 76.09.050.

(4) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(5) "Board" means the forest practices board created in RCW 76.09.030.

(6) "Commissioner" means the commissioner of public lands.

(7) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right-of-way shall be considered contiguous.

(8) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(9) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

(10) "Department" means the department of natural resources.

(11) "Ecosystem services" means the benefits that the public enjoys as a result of natural processes and biological diversity.

(12) "Ecosystem services market" means a system in which providers of ecosystem services can access financing or market capital to protect, restore, and maintain ecological values, including the full spectrum of regulatory, quasiregulatory, and voluntary markets.

(13) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(14) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(15) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(16) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(17) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(18) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(19) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(20) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(21) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(22) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(23) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(24) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(25) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(26) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(27) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(28) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

(29) "Forest practices hydraulic project" means a hydraulic project, as defined under RCW 77.55.011, that requires a forest practices application or notification under this chapter.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(30) "Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

**NEW SECTION. Sec. 213.** A new section is added to chapter 43.21C RCW to read as follows:

The incorporation of fish protection standards adopted under chapter 77.55 RCW into the forest practices rules as required under RCW 76.09.040(3) is exempt from compliance with this chapter.

**NEW SECTION. Sec. 214.** (1) The departments of natural resources and fish and wildlife must jointly provide a report to the appropriate committees of the legislature containing findings and any recommendations relating to the regulatory integration of hydraulic projects and forest practices as provided in this act, including:

(a) Progress made in implementing the integration required under this act, including rule incorporation and development of forest practices board manual guidance;

(b) An update on and potential for permitting efficiencies in addition to the integration required under this act;

(c) The process for and outcomes from review of forest practices applications that include forest practices hydraulic projects by the department of fish and wildlife; and

(d) Compliance monitoring for forest practices hydraulic projects through the review processes provided under WAC 222-08-160 as it existed on the effective date of this section.

(2) The departments of natural resources and fish and wildlife must provide an initial report by September 1, 2014, and a second report by September 1, 2016.

(3) This section expires December 31, 2016.

**NEW SECTION. Sec. 215.** Sections 202 and 205 of this act take effect on the date the forest practices board incorporates fish protection standards adopted under chapter 77.55 RCW into the forest practices rules and approves technical guidance as required under RCW 76.09.040. The department of natural resources must provide written notice of the effective date of these sections to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department of natural resources.

**NEW SECTION. Sec. 216.** Nothing in this act affects any rules, processes, or procedures of the department of fish and wildlife and the department of natural resources existing on the effective date of this section that provide for regulatory integration of hydraulic projects and forest practices for projects in nonfish-bearing waters.

**NEW SECTION. Sec. 217.** Nothing in this act authorizes the department of fish and wildlife to assume authority over approval, disapproval, conditioning, or enforcement of applications or notifications submitted under chapter 76.09 RCW.

**NEW SECTION. Sec. 218.** Nothing in this act affects the jurisdiction or other authority of a federally recognized Indian tribe within the boundary of its reservation or on other tribally owned lands.

**NEW SECTION. Sec. 219.** 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.

**PART THREE**

**State Environmental Policy Act and Local Development Regulations**

**NEW SECTION. Sec. 301.** (1) The legislature recognizes that the rule-based categorical exemption thresholds to chapter 43.21C RCW, found in WAC 197-11-800, have not been updated in recent years, and should be reviewed in light of the increased environmental protections in place under chapters 36.70A and 90.58

RCW, and other laws. It is the intent of the legislature to direct the department of ecology to conduct two phases of rule making over the next two years to increase the thresholds for these categorical exemptions.

(2) By December 31, 2012, the department of ecology shall increase the rule-based categorical exemptions to chapter 43.21C RCW found in WAC 197-11-800 and update the environmental checklist found in WAC 197-11-960. In updating the categorical exemptions, the department of ecology must:

(a) At a minimum, increase the existing maximum threshold levels for the following project types:

(i) The construction or location of single-family residential developments;

(ii) The construction or location of multifamily residential developments;

(iii) The construction of an agricultural structure, other than a feed lot, that is similar to the following: A barn, a loafing shed, a farm equipment storage building, or a produce storing or packing structure;

(iv) The construction of the following, including any associated parking areas or facilities: An office, a school, a commercial building, a recreational building, a service building, or a storage building;

(v) Landfilling or excavation activities; and

(vi) The installation of an electric facility, lines, equipment, or appurtenances, other than substations.

(b) Establish maximum exemption levels for action types that differ based on whether the project is proposed to occur in:

(i) An incorporated city;

(ii) An unincorporated area within an urban growth area;

(iii) An unincorporated area outside of an urban growth area but within a county planning under chapter 36.70A RCW; or

(iv) An unincorporated area within a county not planning under chapter 36.70A RCW.

(c) In updating the environmental checklist found in WAC 197-11-960, the department of ecology shall:

(i) Improve efficiency of the environmental checklist; and

(ii) Not include any new subjects into the scope of the checklist, including climate change and greenhouse gases.

(d) Until the completion of the rule making required under this section, a city or county may apply the highest categorical exemption levels authorized under WAC 197-11-800 to any action, regardless if the city or county with jurisdiction has exercised its authority to raise the exemption levels above the established minimums, unless the city or county with jurisdiction passes an ordinance or resolution that lowers the exemption levels to a level below the allowed maximum but not less than the default minimum levels detailed in WAC 197-11-800.

(3)(a) By December 31, 2013, the department of ecology shall:

(i) Update, but not decrease, the thresholds for all other project actions not specified in subsection (2) of this section;

(ii) Propose methods for integrating the state environmental policy act process with provisions of the growth management act, chapter 36.70A RCW, including consideration of ways to revise WAC 197-11-210 through 197-11-232 to further the goals of RCW 43.21C.240; and

(iii) Create categorical exemptions for minor code amendments for which review under chapter 43.21C RCW would not be required because they do not lessen environmental protection.

(b) During this process, the department of ecology may also review and update the thresholds resulting from the 2012 rule-making process outlined in subsection (2) of this section.

(4)(a) The department of ecology shall convene an advisory committee consisting of members representing, at minimum, cities, counties, business interests, environmental interests, agricultural

interests, cultural resources interests, state agencies, and tribal governments to:

(i) Assist in updating the environmental checklist and updating the thresholds for other project actions for both rule-making processes under subsections (2) and (3) of this section; and

(ii) Ensure that state agencies, tribes, and other interested parties can receive notice about projects of interest through notice under chapter 43.21C RCW and means other than chapter 43.21C RCW.

(b) Advisory committee members must have direct experience with the implementation or application of the state environmental policy act.

(5) This section expires July 31, 2014.

**Sec. 302.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to read as follows:

(1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. Actions categorically exempt under RCW 43.21C.110(1)(a) ~~and section 307 of this act~~ do not require environmental review or the preparation of an environmental impact statement under this chapter. ~~((In a county, city, or town planning under RCW 36.70A.040, a planned action, as provided for in subsection (2) of this section, does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.))~~

(2) An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong.

~~((2))~~(a) For purposes of this section, a planned action means one or more types of project action that:

(i) Are designated planned actions by an ordinance or resolution adopted by a county, city, or town planning under RCW 36.70A.040;

(ii) Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with (A) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or (B) a fully contained community, a master planned resort, a master planned development, or a phased project;

(iii) Are subsequent or implementing projects for the proposals listed in (a)(ii) of this subsection;

(iv) Are located within an urban growth area, as defined in RCW 36.70A.030;

(v) Are not essential public facilities, as defined in RCW 36.70A.200; and

(vi) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.

(b) A county, city, or town shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the county, city, or town and may limit a planned action to a time period identified in

the environmental impact statement or the ordinance or resolution adopted under this subsection.))

**NEW SECTION. Sec. 303.** A new section is added to chapter 43.21C RCW to read as follows:

(1) For purposes of this chapter, a planned action means one or more types of development or redevelopment that meet the following criteria:

(a) Are designated as planned actions by an ordinance or resolution adopted by a county, city, or town planning under RCW 36.70A.040;

(b) Have had the significant impacts adequately addressed in an environmental impact statement under the requirements of this chapter in conjunction with, or to implement, a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or a fully contained community, a master planned resort, a master planned development, or a phased project;

(c) Have had project level significant impacts adequately addressed in an environmental impact statement unless the impacts are specifically deferred for consideration at the project level pursuant to subsection (3)(b) of this section;

(d) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;

(e) Are located within an urban growth area designated pursuant to RCW 36.70A.110;

(f) Are not essential public facilities, as defined in RCW 36.70A.200, unless an essential public facility is accessory to or part of a residential, office, school, commercial, recreational, service, or industrial development that is designated a planned action under this subsection; and

(g) Are consistent with a comprehensive plan or subarea plan adopted under chapter 36.70A RCW.

(2) A county, city, or town shall define the types of development included in the planned action and may limit a planned action to:

(a) A specific geographic area that is less extensive than the jurisdictional boundaries of the county, city, or town; or

(b) A time period identified in the ordinance or resolution adopted under this subsection.

(3)(a) A county, city, or town shall determine during permit review whether a proposed project is consistent with a planned action ordinance adopted by the jurisdiction. To determine project consistency with a planned action ordinance, a county, city, or town may utilize a modified checklist pursuant to the rules adopted to implement RCW 43.21C.110, a form that is designated within the planned action ordinance, or a form contained in agency rules adopted pursuant to RCW 43.21C.120.

(b) A county, city, or town is not required to make a threshold determination and may not require additional environmental review, for a proposal that is determined to be consistent with the development or redevelopment described in the planned action ordinance, except for impacts that are specifically deferred to the project level at the time of the planned action ordinance's adoption. At least one community meeting must be held before the notice is issued for the planned action ordinance. Notice for the planned action and notice of the community meeting required by this subsection (3)(b) must be mailed or otherwise verifiably provided to: (i) All affected federally recognized tribal governments; and (ii) agencies with jurisdiction over the future development anticipated for the planned action. The determination of consistency, and the adequacy of any environmental review that was specifically deferred, are subject to the type of administrative appeal that the county, city, or town provides for the proposal itself consistent with RCW 36.70B.060.

(4) For a planned action ordinance that encompasses the entire jurisdictional boundary of a county, city, or town, at least one community meeting must be held before the notice is issued for the planned action ordinance. Notice for the planned action ordinance

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

and notice of the community meeting required by this subsection must be mailed or otherwise verifiably provided to:

(a) All property owners of record within the county, city, or town;

(b) All affected federally recognized tribal governments; and

(c) All agencies with jurisdiction over the future development anticipated for the planned action.

**Sec. 304.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to read as follows:

(1) In order to accommodate infill development and thereby realize the goals and policies of comprehensive plans adopted according to chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is authorized by this section to establish categorical exemptions from the requirements of this chapter. An exemption adopted under this section applies even if it differs from the categorical exemptions adopted by rule of the department under RCW 43.21C.110(1)(a). An exemption may be adopted by a city or county under this section if it meets the following criteria:

(a) It categorically exempts government action related to development ~~((that is new residential or mixed-use development))~~ proposed to fill in an urban growth area, designated according to RCW 36.70A.110, where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan and the development is either:

(i) Residential development;

(ii) Mixed-use development; or

(iii) Commercial development up to sixty-five thousand square feet, excluding retail development;

(b) It does not exempt government action related to development that is inconsistent with the applicable comprehensive plan or would exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan; ~~((and))~~

(c) The local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, planned action ordinance, or other local, state, or federal rules or laws; and

(d)(i) The city or county's applicable comprehensive plan was previously subjected to environmental analysis through an environmental impact statement under the requirements of this chapter prior to adoption; or

(ii) The city or county has prepared an environmental impact statement that considers the proposed use or density and intensity of use in the area proposed for an exemption under this section.

(2) Any categorical exemption adopted by a city or county under this section shall be subject to the rules of the department adopted according to RCW 43.21C.110(1)(a) that provide exceptions to the use of categorical exemptions adopted by the department.

**NEW SECTION. Sec. 305.** A new section is added to chapter 43.21C RCW to read as follows:

(1) A county, city, or town may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and section 303 of this act:

(a) Through access to financial assistance under RCW 36.70A.490;

(b) With funding from private sources; and

(c) By the assessment of fees consistent with the requirements and limitations of this section.

(2)(a) A county, city, or town is authorized to assess a fee upon subsequent development that will make use of and benefit from: (i) The analysis in an environmental impact statement prepared for the purpose of compliance with section 303 of this act regarding

planned actions; or (ii) the reduction in environmental analysis requirements resulting from the exercise of authority under RCW 43.21C.229 regarding infill development.

(b) The amount of the fee must be reasonable and proportionate to the total expenses incurred by the county, city, or town in the preparation of the environmental impact statement.

(3) A county, city, or town assessing fees under subsection (2)(a) of this section must provide for a mechanism by which project proponents may either elect to utilize the environmental review completed by the lead agency and pay the fees under subsection (1) of this section or certify that they do not want the local jurisdiction to utilize the environmental review completed as a part of a planned action and therefore not be assessed any associated fees. Project proponents who choose this option may not make use of or benefit from the up-front environmental review prepared by the local jurisdiction.

(4) Prior to the collection of fees, the county, city, or town must enact an ordinance that establishes the total amount of expenses to be recovered through fees and provides objective standards for determining the fee amount to be imposed upon each development proposal proportionate to the impacts of each development and to the benefits accruing to each development from the nonproject environmental review. The ordinance must provide (a) a procedure by which an applicant who disagrees with whether the amount of the fee is correct, reasonable, or proportionate may pay the fee with the written stipulation "paid under protest"; and (b) if the county, city, or town provides for an administrative appeal of its decision on the project for which the fees are imposed, any dispute about the amount of the fees must be resolved in the same administrative appeals process. Any disagreement about the reasonableness, proportionality, or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development.

(5) The ordinance adopted under subsection (4) of this section must make information available about the amount of the expenses designated for recovery. When such expenses have been fully recovered, the county, city, or town may no longer assess a fee under this section.

(6) Any fees collected under this section from subsequent development may be used to reimburse funding received from private sources to conduct the environmental review.

(7) The city, county, or town shall refund fees collected where a court of competent jurisdiction determines that the environmental review conducted under section 303 of this act, regarding planned actions, or under RCW 43.21C.229, regarding infill development, was not sufficient to comply with the requirements of this chapter regarding the proposed development activity for which the fees were collected. The applicant and the city, county, or town may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with this chapter.

**Sec. 306.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read as follows:

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land.

However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6) and section 305 of this act.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefited thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

**NEW SECTION. Sec. 307.** A new section is added to chapter 43.21C RCW to read as follows:

The following nonproject actions are categorically exempt from the requirements of this chapter:

(1) Amendments to development regulations that are required to ensure consistency with an adopted comprehensive plan pursuant to RCW 36.70A.040, where the comprehensive plan was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(2) Amendments to development regulations that are required to ensure consistency with a shoreline master program approved pursuant to RCW 90.58.090, where the shoreline master program was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(3) Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:

(a) Increased protections for critical areas, such as enhanced buffers or setbacks;

(b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction; and

(c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law, including the following:

(a) Building codes required by chapter 19.27 RCW;

(b) Energy codes required by chapter 19.27A RCW; and

(c) Electrical codes required by chapter 19.28 RCW.

**NEW SECTION. Sec. 308.** A new section is added to chapter 43.21C RCW to read as follows:

(1) The lead agency for an environmental review under this chapter utilizing an environmental checklist developed by the department of ecology pursuant to RCW 43.21C.110 may identify within the checklist provided to applicants instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

(2) If a lead agency identifies an instance as described in subsection (1) of this section, it still must consider whether the action has an impact on the particular element or elements of the environment in question.

(3) In instances where the locally adopted ordinance, development regulation, land use plan, or other legal authority provide the necessary information to answer a specific question, the lead agency must explain how the proposed project satisfies the underlying local legal authority.

(4) If the lead agency identifies instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority, an applicant may still provide answers to any questions on the checklist.

(5) Nothing in this section authorizes a lead agency to ignore or delete a question on the checklist.

(6) Nothing in this section changes the standard for whether an environmental impact statement is required for an action that may have a probable significant, adverse environmental impact pursuant to RCW 43.21C.030.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(7) Nothing in this section affects the appeal provisions provided in this chapter.

(8) Nothing in this section modifies existing rules for determining the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor does it modify agency procedures for complying with the state environmental policy act when an agency other than a local government is serving as the lead agency.

**Sec. 309.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to read as follows:

The growth management planning and environmental review fund is hereby established in the state treasury. Moneys may be placed in the fund from the proceeds of bond sales, tax revenues, budget transfers, federal appropriations, gifts, or any other lawful source. Moneys in the fund may be spent only after appropriation. Moneys in the fund shall be used to make grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any payment of either principal or interest, or both, derived from loans made from this fund must be deposited into the fund.

**Sec. 310.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to read as follows:

(1) The department of (~~community, trade, and economic development~~) commerce shall provide management services for the growth management planning and environmental review fund created by RCW 36.70A.490. The department shall establish procedures for fund management. The department shall encourage participation in the grant or loan program by other public agencies. The department shall develop the grant or loan criteria, monitor the grant or loan program, and select grant or loan recipients in consultation with state agencies participating in the grant or loan program through the provision of grant or loan funds or technical assistance.

(2) A grant or loan may be awarded to a county or city that is required to or has chosen to plan under RCW 36.70A.040 and that is qualified pursuant to this section. The grant or loan shall be provided to assist a county or city in paying for the cost of preparing an environmental analysis under chapter 43.21C RCW, that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulation, monitoring program, or other planning activity adopted under or implementing this chapter that:

(a) Improves the process for project permit review while maintaining environmental quality; or

(b) Encourages use of plans and information developed for purposes of complying with this chapter to satisfy requirements of other state programs.

(3) In order to qualify for a grant or loan, a county or city shall:

(a) Demonstrate that it will prepare an environmental analysis pursuant to chapter 43.21C RCW and subsection (2) of this section that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulations, monitoring program, or other planning activity adopted under or implementing this chapter;

(b) Address environmental impacts and consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by applicants for development permits within the geographic area analyzed in the plan;

(c) Demonstrate that procedures for review of development permit applications will be based on the integrated plans and environmental analysis;

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;

(e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

(f) Provide local funding, which may include financial participation by the private sector.

(4) In awarding grants or loans, the department shall give preference to proposals that include one or more of the following elements:

(a) Financial participation by the private sector, or a public/private partnering approach;

(b) Identification and monitoring of system capacities for elements of the built environment, and to the extent appropriate, of the natural environment;

(c) Coordination with state, federal, and tribal governments in project review;

(d) Furtherance of important state objectives related to economic development, protection of areas of statewide significance, and siting of essential public facilities;

(e) Programs to improve the efficiency and effectiveness of the permitting process by greater reliance on integrated plans and prospective environmental analysis;

(f) Programs for effective citizen and neighborhood involvement that contribute to greater likelihood that planning decisions can be implemented with community support; (~~and~~)

(g) Programs to identify environmental impacts and establish mitigation measures that provide effective means to satisfy concurrency requirements and establish project consistency with the plans; or

(h) Environmental review that addresses the impacts of increased density or intensity of comprehensive plans, subarea plans, or receiving areas designated by a city or town under the regional transfer of development rights program in chapter 43.362 RCW.

(5) If the local funding includes funding provided by other state functional planning programs, including open space planning and watershed or basin planning, the functional plan shall be integrated into and be consistent with the comprehensive plan.

(6) State agencies shall work with grant or loan recipients to facilitate state and local project review processes that will implement the projects receiving grants or loans under this section.

**Sec. 311.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to read as follows:

It shall be the duty and function of the department of ecology:

(1) To adopt and amend (~~hereafter~~) rules of interpretation and implementation of this chapter, subject to the requirements of chapter 34.05 RCW, for the purpose of providing uniform rules and guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. The proposed rules shall be subject to full public hearings requirements associated with rule (~~promulgation~~) adoption. Suggestions for modifications of the proposed rules shall be considered on their merits, and the department shall have the authority and responsibility for full and appropriate independent (~~promulgation and~~) adoption of rules, assuring consistency with this chapter as amended and with the preservation of protections afforded by this chapter. The rule-making powers authorized in this section shall include, but shall not be limited to, the following phases of interpretation and implementation of this chapter:

(a) Categories of governmental actions which are not to be considered as potential major actions significantly affecting the quality of the environment, including categories pertaining to applications for water right permits pursuant to chapters 90.03 and 90.44 RCW. The types of actions included as categorical

exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment. The rules shall provide for certain circumstances where actions which potentially are categorically exempt require environmental review. An action that is categorically exempt under the rules adopted by the department may not be conditioned or denied under this chapter.

(b) Rules for criteria and procedures applicable to the determination of when an act of a branch of government is a major action significantly affecting the quality of the environment for which a detailed statement is required to be prepared pursuant to RCW 43.21C.030.

(c) Rules and procedures applicable to the preparation of detailed statements and other environmental documents, including but not limited to rules for timing of environmental review, obtaining comments, data and other information, and providing for and determining areas of public participation which shall include the scope and review of draft environmental impact statements.

(d) Scope of coverage and contents of detailed statements assuring that such statements are simple, uniform, and as short as practicable; statements are required to analyze only reasonable alternatives and probable adverse environmental impacts which are significant, and may analyze beneficial impacts.

(e) Rules and procedures for public notification of actions taken and documents prepared.

(f) Definition of terms relevant to the implementation of this chapter including the establishment of a list of elements of the environment. Analysis of environmental considerations under RCW 43.21C.030(2) may be required only for those subjects listed as elements of the environment (or portions thereof). The list of elements of the environment shall consist of the "natural" and "built" environment. The elements of the built environment shall consist of public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

(g) Rules for determining the obligations and powers under this chapter of two or more branches of government involved in the same project significantly affecting the quality of the environment.

(h) Methods to assure adequate public awareness of the preparation and issuance of detailed statements required by RCW 43.21C.030(2)(c).

(i) To prepare rules for projects setting forth the time limits within which the governmental entity responsible for the action shall comply with the provisions of this chapter.

(j) Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.

(k) Rules relating to actions which shall be exempt from the provisions of this chapter in situations of emergency.

(l) Rules relating to the use of environmental documents in planning and decision making and the implementation of the substantive policies and requirements of this chapter, including procedures for appeals under this chapter.

(m) Rules and procedures that provide for the integration of environmental review with project review as provided in RCW 43.21C.240. The rules and procedures shall be jointly developed with the department of ~~((community, trade, and economic development))~~ commerce and shall be applicable to the preparation of environmental documents for actions in counties, cities, and towns planning under RCW 36.70A.040. The rules and procedures shall also include procedures and criteria to analyze planned actions under ~~((RCW 43.21C.031(2)))~~ section 303 of this act and revisions to the rules adopted under this section to ensure that they are

compatible with the requirements and authorizations of chapter 347, Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or procedures adopted by a county, city, or town to implement the provisions of chapter 347, Laws of 1995 prior to the effective date of rules adopted under this subsection (1)(m) shall continue to be effective until the adoption of any new or revised ordinances or procedures that may be required. If any revisions are required as a result of rules adopted under this subsection (1)(m), those revisions shall be made within the time limits specified in RCW 43.21C.120.

(2) In exercising its powers, functions, and duties under this section, the department may:

(a) Consult with the state agencies and with representatives of science, industry, agriculture, labor, conservation organizations, state and local governments, and other groups, as it deems advisable; and

(b) Utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals, in order to avoid duplication of effort and expense, overlap, or conflict with similar activities authorized by law and performed by established agencies.

(3) Rules adopted pursuant to this section shall be subject to the review procedures of chapter 34.05 RCW.

**Sec. 312.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to read as follows:

The rules ~~((promulgated))~~ adopted under RCW 43.21C.110 shall be accorded substantial deference in the interpretation of this chapter.

**Sec. 313.** RCW 90.48.260 and 2011 c 353 s 12 are each amended to read as follows:

(1) The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of this chapter ~~((90.48 RCW))~~ or otherwise, the following:

(a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (i) Effluent treatment and limitation requirements together with timing

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

requirements related thereto; (ii) applicable receiving water quality standards requirements; (iii) requirements of standards of performance for new sources; (iv) pretreatment requirements; (v) termination and modification of permits for cause; (vi) requirements for public notices and opportunities for public hearings; (vii) appropriate relationships with the secretary of the army in the administration of his or her responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his or her duties, and with other governmental officials under the federal clean water act; (viii) requirements for inspection, monitoring, entry, and reporting; (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; (x) a continuing planning process; and (xi) user charges.

(b) The power to establish and administer state programs in a manner which will ~~((insure))~~ ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

The governor shall have authority to perform those actions required of him or her by the federal clean water act.

(2) ((By July 31, 2012, the department shall:))

(a) ((Reissue without modification and for a term of one year any national pollutant discharge elimination system municipal storm water general permit first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit for any permit first issued on January 17, 2007. An updated permit issued under this subsection shall become effective beginning August 1, 2013.)) By July 31, 2012, the department shall reissue without modification and for a term of one year any national pollutant discharge elimination system municipal storm water general permit first issued January 17, 2007, for western Washington municipalities.

(b) The department shall issue updated national pollutant discharge elimination system municipal storm water general permits for western Washington municipalities whose permits were first issued or reissued January 17, 2007, as follows:

(i) By July 1, 2012, the department shall publish final proposed permits following consideration of comments from the public and appropriate stakeholders, and provide the final proposed permits to the appropriate committees of the senate and house of representatives for legislative review;

(ii) The legislature may modify the final proposed permits through legislative enactment by the end of the 2013 regular legislative session. Except as directed by the legislature, the department may not modify the final proposed permits following its being published under (b)(i) of this subsection;

(iii) On July 1, 2013, the department shall issue final permits consisting of the provisions of the final proposed permits and any modifications directed by the legislature; and

(iv) The final permit becomes effective August 1, 2013.

(3) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of two years any national pollutant discharge elimination system municipal storm water general permit first issued January 17, 2007, for eastern Washington municipalities; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit for any permit first issued on January 17, 2007, for eastern Washington municipalities.

An updated permit issued under this subsection becomes effective August 1, 2014."

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

POINT OF ORDER

Senator Ranker: "Mr. President, I request that the President rule that amendment 213 to the committee substitute expands the scope and object of this legislation. The Legislation before this body is well stated in the intent section. it is a measure that updates provisions for four specific regulatory programs. These programs are the hydraulic approval program; the forest practices program; the environmental policy act; and the growth management act appeals. The amendment by contrast would change an entirely different section, entirely different program by extending an existing permit for a number of local jurisdictions regarding clean up and urban storm water runoff. Under your prior rulings Mr. President, this amendment expands both the scope and the object of this bill. The scope or subject of this bill is in four specific programs referenced earlier not just any permit program that might conceivably have connections with the state's natural resources. The amendment's subject relating to storm water permits is a separate program codified in an entirely different RCW and title. For these reasons I respectfully request that you rule that the amendment extends the scope and object of this bill."

Senator Hargrove spoke against the point of order.

MOTION

On motion of Senator Eide, further consideration of Substitute Senate Bill No. 6406 was deferred and the bill held its place on the second reading calendar.

MOTION

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

MOTION

On motion of Senator Ranker, Senator Kilmer was excused.

Senator Prentice assumed the chair.

MESSAGE FROM THE HOUSE

February 27, 2012

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6105 with the following amendment(s): 6105-S AMH HCW BLAC 131

On page 2, line 17, after "requirements of" insert "subsections (1) through (3) of"

On page 2, line 31, after "RCW" insert ". The department, in collaboration with the veterinary board of governors, shall establish alternative data reporting requirements for veterinarians that allow veterinarians to report:

(i) By either electronic or non-electronic methods;

(ii) Only those data elements that are relevant to veterinary practices and necessary to accomplish the public protection goals of this chapter; and

(iii) No more frequently than once every three months and no less frequently than once every six months"

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

### MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6105.

Senators Keiser and Parlette spoke in favor of the motion.

The President Pro Tempore declared the question before the Senate to be the motion by Senator Keiser that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6105.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6105 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6105, as amended by the House.

### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6105, 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 Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Delvin

Excused: Senator Harper

SUBSTITUTE SENATE BILL NO. 6105, 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 1, 2012

MR. PRESIDENT:

The House passed SECOND SUBSTITUTE SENATE BILL NO. 6140 with the following amendment(s): 6140-S2 AMH CDH H4385.3

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature finds that the issuance of taxable nonrecourse revenue bonds by the Washington economic development finance authority has provided a number of Washington firms with the financing necessary to grow and create jobs. The legislature further finds that municipal authority to issue taxable nonrecourse revenue bonds does not exist and that authorizing the local issuance of taxable bonds for economic development purposes will increase local capacity to strengthen businesses and create jobs.

(2) It is the purpose of this chapter to grant new authority for cities, counties, and port districts that created public corporations under chapter 39.84 RCW prior to 2012, in order to build on the expertise with tax-exempt nonrecourse revenue bond financing developed by these municipalities. Therefore, these municipalities are permitted to create local economic development finance

authorities to act as a financial conduit that, without using state or local government funds or lending the credit of the state or local governments, can issue taxable and nontaxable nonrecourse revenue bonds, and participate in federal, state, and local economic development programs to help facilitate access to needed capital by Washington businesses. It is also a primary purpose of this chapter to encourage the development of local innovative approaches to the problem of unmet capital needs. This chapter must be construed liberally to carry out its purposes and objectives.

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

(1) "Authority" means a local economic development finance authority created under this chapter. An authority is a public body within the meaning of RCW 39.53.010.

(2) "Board of directors" means the board of directors of an authority.

(3) "Bonds" means any bonds, notes, debentures, interim certificates, conditional sales or lease financing agreements, lines of credit, forward purchase agreements, investment agreements, and other banking or financial arrangements, guaranties, or other obligations issued by or entered into by the authority. Such bonds may be issued on either a tax-exempt or taxable basis.

(4) "Borrower" means one or more public or private persons or entities acting as lessee, purchaser, mortgagor, or borrower who has obtained or is seeking to obtain financing either from an authority or from an eligible banking organization that has obtained or is seeking to obtain funds from the authority to finance a project. A borrower may include a party who transfers the right of use and occupancy to another party by lease, sublease, or otherwise, or a party who is seeking or has obtained a financial guaranty from the authority.

(5) "Economic development activities" means activities related to: Manufacturing, processing, the commercialization of research, production, assembly, tooling, warehousing, exporting products made in Washington or services provided by Washington firms, airports, docks and wharves, mass commuting facilities, high-speed intercity rail facilities, public broadcasting, pollution control, solid waste disposal, federally qualified hazardous waste facilities, energy generating, conservation, or transmission facilities, sports facilities, industrial parks, and activities conducted within a federally designated enterprise or empowerment zone or geographic area of similar nature.

(6) "Eligible banking organization" means any organization subject to regulation by the director of the department of financial institutions, any national bank, federal savings and loan association, and federal credit union located within this state.

(7) "Eligible person" means an individual, partnership, corporation, or joint venture carrying on business, or proposing to carry on business, within the state and seeking financial assistance under this act.

(8) "Financial assistance" means the infusion of capital to persons for use in the development and exploitation of specific inventions and products.

(9) "Financing agreements" means, and includes without limitation, a contractual arrangement with an eligible person whereby an authority obtains rights from or in an invention or product or proceeds from an invention or product in exchange for the granting of financial and other assistance to the person.

(10) "Financing document" means an instrument executed by an authority and one or more persons or entities pertaining to the issuance of or security for bonds, or the application of the proceeds of bonds or other funds of, or payable to, the authority. A financing document may include, but need not be limited to, a lease, installment sale agreement, conditional sale agreement, mortgage, loan agreement, trust agreement or indenture, security agreement, letter or line of credit, reimbursement agreement, insurance policy,

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

guaranty agreement, or currency or interest rate swap agreement. A financing document also may be an agreement between the authority and an eligible banking organization which has agreed to make a loan to a borrower.

(11) "Investment grade credit rating" means a rating of at least BBB- by standard & poor's, Baa3 by moody's investors service, or BBB- by fitch.

(12) "Municipality" means a city, town, county, or port district of this state.

(13) "Ordinance" means any appropriate method of taking official action or adopting a legislative decision by any municipality, whether known as a resolution, ordinance, or otherwise.

(14) "Plan" means the general plan of economic development finance objectives developed and adopted by the authority, and updated from time to time, as required under RCW 43.163.090.

(15) "Product" means a product, device, technique, or process that is or may be exploitable commercially. "Product" does not refer to pure research, but does apply to products, devices, techniques, or processes that have advanced beyond the theoretic stage and are readily capable of being, or have been, reduced to practice.

(16) "Project costs" means costs of:

(a) Acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of land, rights to land, buildings, structures, docks, wharves, fixtures, machinery, equipment, excavations, paving, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities, and any other real or personal property included in an economic development activity;

(b) Architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of an activity included under subsection (5) of this section, including costs of studies assessing the feasibility of an economic development activity;

(c) Finance costs, including the costs of credit enhancement and discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any financing document;

(d) Start-up costs, working capital, capitalized research and development costs, capitalized interest during construction and during the eighteen months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves;

(e) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(f) Other costs incidental to any of the costs listed in this subsection.

**NEW SECTION. Sec. 3.** (1) A municipality that formed a public corporation under chapter 39.84 RCW prior to January 1, 2012, may, if that public corporation is still in existence, enact an ordinance creating an economic development finance authority for the purposes authorized in this chapter. The ordinance creating the authority must approve a charter for the authority containing such provisions as are authorized by and not in conflict with this chapter. Any charter issued under this chapter must contain in substance the limitations set forth in section 4 of this act. In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the ordinance creating the authority by the governing body. A copy of the ordinance duly certified by the clerk of the governing body of the municipality is admissible in evidence in any suit, action, or proceeding.

(2) An authority created by a municipality pursuant to this chapter may be dissolved by the municipality if: (a) The authority has no property to administer, other than funds or property, if any, to be paid or transferred to the municipality by which it was established; and (b) all the authority's outstanding obligations have been satisfied. Such a dissolution must be accomplished by the governing body of the municipality adopting an ordinance providing for the dissolution.

(3) The creating municipality may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of an authority, including termination of the authority if contracts entered into by the authority are not impaired. Any net earnings of an authority, beyond those necessary for retirement of indebtedness incurred by it, do not inure to the benefit of any person other than the creating municipality. Upon dissolution of an authority, title to all property owned by the authority vests in the municipality.

(4) The ordinance creating an authority must include provisions establishing a board of directors to govern the affairs of the authority, what constitutes a quorum of the board of directors, and how the authority must conduct its affairs.

(5) For a period of ten years after any financing through an authority, it is illegal for a director, officer, agent, or employee of an authority to have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services, or materials to be furnished or used in connection with any economic development activity financed through the authority. Violation of any provision of this section is a gross misdemeanor.

(6) The finances of any authority are subject to examination by the state auditor's office pursuant to RCW 43.09.260.

**NEW SECTION. Sec. 4.** (1) No municipality may give or lend any money or property in aid of an authority. The municipality that creates an authority must annually review any financial statements of the authority and at all times must have access to the books and records of the authority. No authority may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and the county, city, or town within whose planning jurisdiction the economic development activity to be financed lies. Upon receiving approval from these jurisdictions, an authority must, before bonds may be issued, obtain one of the following:

(a) A letter of credit supporting the creditworthiness of the borrower from a bank with an investment grade credit rating;

(b) Confirmation that the borrower has arranged for private placement of the bonds with an institutional investor; or

(c) Confirmation that the borrower has an investment grade credit rating of their own.

(2) An authority established under the terms of this chapter constitutes an authority and an instrumentality (within the meaning of those terms in the regulations of the United States treasury and the rulings of the internal revenue service prescribed pursuant to 26 U.S.C. Sec. 103 of the federal internal revenue code of 1986, as amended) may act on behalf of the municipality under whose auspices it is created for the specific public purposes authorized by this chapter. The authority is not a municipal corporation within the meaning of the state Constitution and the laws of the state, or a political subdivision within the meaning of the state Constitution and the laws of the state, including without limitation, Article VIII, section 7 of the Washington state Constitution. A municipality may not delegate to an authority any of the municipality's attributes of sovereignty including, without limitation, the power to tax, the power of eminent domain, and the police power.

**NEW SECTION. Sec. 5.** (1) An authority established pursuant to this chapter may develop and conduct a program or

programs to provide nonrecourse revenue bond financing for the project costs for economic development activities.

(2) An authority is authorized to participate fully in federal and other governmental economic development finance programs and to take such actions as are necessary and consistent with this chapter to secure the benefits of those programs and to meet their requirements.

(3) An authority may develop and conduct a program that will stimulate and encourage the development of new products within Washington state by the infusion of financial aid for invention and innovation in situations in which the financial aid would not otherwise be reasonably available from commercial sources. The authority is authorized to provide nonrecourse revenue bond financing for this program.

(a) For the purposes of this program, the authority has the following powers and duties:

(i) To enter into financing agreements with eligible persons doing business in Washington state, upon terms and on conditions consistent with the purposes of this chapter, for the advancement of financial and other assistance to the persons for the development of specific products, procedures, and techniques, to be developed and produced in this state, and to condition the agreements upon contractual assurances that the benefits of increasing or maintaining employment and tax revenues remain in this state and accrue to it;

(ii) Own, possess, and take license in patents, copyrights, and proprietary processes and negotiate and enter into contracts and establish charges for the use of the patents, copyrights, and proprietary processes when the patents and licenses for products result from assistance provided by the authority;

(iii) Negotiate royalty payments to the authority on patents and licenses for products arising as a result of assistance provided by the authority;

(iv) Negotiate and enter into other types of contracts with eligible persons that assure that public benefits will result from the provision of services by the authority; provided that the contracts are consistent with the state Constitution;

(v) Encourage and provide technical assistance to eligible persons in the process of developing new products;

(vi) Refer eligible persons to researchers or laboratories for the purpose of testing and evaluating new products, processes, or innovations; and

(vii) To the extent permitted under its contract with eligible persons, to consent to a termination, modification, forgiveness, or other change of a term of a contractual right, payment, royalty, contract, or agreement of any kind to which the authority is a party.

(b) Eligible persons seeking financial and other assistance under this program must forward an application, together with an application fee prescribed by rule, to the authority. An investigation and report concerning the advisability of approving an application for assistance must be completed by the staff of the authority. The investigation and report may include, but is not limited to, facts about the company under consideration as its history, wage standards, job opportunities, stability of employment, past and present financial condition and structure, pro forma income statements, present and future markets and prospects, integrity of management as well as the feasibility of the proposed product and invention to be granted financial assistance, including the state of development of the product as well as the likelihood of its commercial feasibility. After receipt and consideration of the report set out in this subsection and after other action as is deemed appropriate, the application must be approved or denied by the authority. The applicant must be promptly notified of action by the authority.

(4) An authority may receive no appropriation of state funds. The department of commerce and the Washington economic development finance authority may assist a local economic

development finance authority in organizing itself and in designing programs.

(5) An authority may use any funds legally available to it for any purpose specifically authorized by this chapter, or for otherwise improving economic development by assisting businesses and farm enterprises that do not have access to capital at terms and rates comparable to large corporations due to the location of the business, the size of the business, the lack of financial expertise, or other appropriate reasons.

(6) An authority must coordinate its activities with those, including bond issuance activities, of the creating municipality and the public corporation created under chapter 39.84 RCW by the creating municipality.

**NEW SECTION. Sec. 6.** (1) An authority established pursuant to this chapter must adopt general operating procedures for the authority. The authority must also adopt operating procedures for individual programs as they are developed for obtaining funds and for providing funds to borrowers. These operating procedures must be adopted by resolution prior to the authority operating the applicable programs.

(2) The operating procedures must include, but are not limited to:

(a) Appropriate standards for securing loans and other financing the authority provides to borrowers, such as guarantees or collateral; and

(b) Strict standards for providing financing to borrowers, such as:

(i) The borrower is a responsible party with a high probability of being able to repay the financing provided by the authority;

(ii) The financing is reasonably expected to benefit the creating municipality by enabling a borrower to increase or maintain jobs or capital in the municipality;

(iii) The borrowers with the greatest needs or that provide the most public benefit are given higher priority by the authority; and

(iv) The financing is consistent with any plan adopted by the authority under the provisions of section 7 of this act.

**NEW SECTION. Sec. 7.** (1) Any authority established pursuant to this chapter must adopt a general plan of economic development finance objectives to be implemented by the authority during the period of the plan. The authority may exercise the powers authorized under this chapter prior to the adoption of the initial plan. In developing the plan, the authority must consider and set objectives for:

(a) Employment generation associated with the authority's programs;

(b) The application of funds to economic sectors and economic development activity evidencing need for improved access to capital markets and funding resources;

(c) Eligibility criteria for participants in authority programs;

(d) The use of funds and resources available from or through federal, state, local, and private sources and programs;

(e) New programs which serve a targeted need for financing assistance within the purposes of this chapter; and

(f) Opportunities to improve capital access as evidenced by programs existent in other localities or as they are made possible by results of private capital market circumstances.

(2) Upon adoption of the general plan the authority must conduct its programs in observance of the objectives established in the plan. The authority may periodically update the plan as determined necessary by the authority.

**NEW SECTION. Sec. 8.** In addition to carrying out the economic development finance activities and programs specifically authorized in this chapter, an authority may:

(1) Maintain an office or offices;

(2) Sue and be sued in its own name, and plead and be impleaded;

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(3) Engage consultants, agents, attorneys, and advisers, contract with federal, state, and local governmental entities for services, and hire such employees, agents, and other personnel as the authority deems necessary, useful, or convenient to accomplish its purposes;

(4) Make and execute all manner of contracts, agreements and instruments, and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;

(5) Acquire and hold real or personal property, or any interest therein, in the name of the authority, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the authority deems necessary, useful, or convenient to accomplish its purposes;

(6) Open and maintain accounts in qualified public depositories and otherwise provide for the investment of any funds not required for immediate disbursement, and provide for the selection of investments;

(7) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, or local government;

(8) Procure such insurance in such amounts and from such insurers as the authority deems desirable including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;

(9) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used, and applied as the authority deems necessary, useful, or convenient to accomplish its purposes;

(10) Establish guidelines for the participation by eligible banking organizations in programs conducted by the authority under this chapter;

(11) Act as an agent, by agreement, for federal, state, or local governmental entities to carry out the programs authorized in this chapter;

(12) Establish, revise, and collect such fees and charges as the authority deems necessary, useful, or convenient to accomplish its purposes;

(13) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter;

(14) Establish such reserves and special funds, and controls on deposits to and disbursements from them, as the authority deems necessary, useful, or convenient to accomplish its purposes;

(15) Prepare, publish, and distribute, with or without charge, such studies, reports, bulletins, and other material as the authority deems necessary, useful, or convenient to accomplish its purposes;

(16) Delegate any of its powers and duties if consistent with the purposes of this chapter;

(17) Adopt rules concerning its exercise of the powers authorized by this chapter; and

(18) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter.

**NEW SECTION. Sec. 9.** Notwithstanding any other provision of this chapter, an authority may not:

(1) Give any municipal or state money or property or loan any municipal or state money or credit to or in aid of any individual, association, company, or corporation, or become directly or indirectly the owner of any stock in or bonds of any association, company, or corporation;

(2) Issue bills of credit or accept deposits of money for time or demand deposit, administer trusts, engage in any form or manner in, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association other than as provided in this chapter;

(3) Be or constitute a bank or trust company within the jurisdiction or under the control of the director of financial institutions, the comptroller of the currency of the United States of America, or the treasury department thereof;

(4) Be or constitute a bank, broker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers' law of the United States of America or the state;

(5) Engage in the financing of housing as provided for in chapter 43.180 RCW;

(6) Engage in the financing of health care facilities as provided for in chapter 70.37 RCW;

(7) Engage in financing higher education facilities as provided for in chapter 28B.07 RCW; or

(8) Exercise any of the powers authorized in this chapter or issue any revenue bonds with respect to any economic development activity unless the economic development activity is located wholly within the boundaries of the municipality under whose auspices the authority is created or unless the economic development activity comprises energy facilities or solid waste disposal facilities which provide energy for or dispose of solid waste from the municipality or the residents thereof.

**NEW SECTION. Sec. 10.** (1) An authority may issue its nonrecourse revenue bonds in order to obtain the funds to carry out the programs authorized in this chapter. The bonds must be special obligations of the authority, payable solely out of the special fund or funds established by the authority for their repayment.

(2) Any bonds issued under this chapter may be secured by a financing document between the authority and the purchasers or owners of such bonds or between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(a) The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof.

(b) The financing document may contain such provisions for protecting and enforcing the rights, security, and remedies of bond owners as may be reasonable and proper including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bond owners, and covenants setting forth duties of and limitations on the authority in conduct of its programs and the management of its property.

(c) In addition to other security provided in this chapter or otherwise by law, bonds issued by the authority may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the authority or a trustee or any other person, by any bank, trust company, insurance or surety company, or other financial institution, within or without the state. The authority may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the authority to any issuer of such letter of credit of any payments made under such letter of credit.

(3) Without limiting the powers of the authority contained in this chapter, in connection with each issue of its obligation bonds, the authority must create and establish one or more special funds including, but not limited to, debt service and sinking funds, reserve funds, project funds, and such other special funds as the authority deems necessary, useful, or convenient.

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority is

immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest must be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the uniform commercial code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(5) The bonds may be issued as serial bonds, term bonds, or any other type of bond instrument consistent with the provisions of this chapter. The bonds must bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; bear such privileges of transferability, exchangeability, and interchangeability; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time or times, and at such price or prices as the authority determines. The bonds must be executed by the manual or facsimile signatures of the authority's chair and either its secretary or executive director, and may be authenticated by the trustee (if the authority determines to use a trustee) or any registrar which may be designated for the bonds by the authority.

(6) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to maturity of, and to pay any redemption premium on, the outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(7) The bonds of the authority may be negotiable instruments under Title 62A RCW.

(8) Neither the board of directors of the authority, nor its employees or agents, nor any person executing the bonds is personally liable on the bonds or subject to any personal liability or accountability by reason of the issuance of the bonds.

(9) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel, or resell the bonds subject to and in accordance with agreements with bond owners.

(10) The state finance committee must be notified in advance of the issuance of bonds by the authority in order to promote the orderly offering of obligations in the financial markets.

**NEW SECTION. Sec. 11.** (1) Bonds issued by an authority established under this chapter are not considered to constitute a debt of the state, of the municipality, or of any other municipal corporation, quasi-municipal corporation, subdivision, or agency of this state or to pledge any or all of the faith and credit of any of these entities. The revenue bonds are payable solely from both the revenues derived as a result of the economic development activities funded by the revenue bonds including, without limitation, amounts received under the terms of any financing document or by reason of any additional security furnished by beneficiaries of the economic development activity in connection with the financing thereof, and money and other property received from private sources. The issuance of bonds under this chapter do not obligate, directly, indirectly, or contingently, the state or any political subdivision of the state to levy any taxes or appropriate or expend any funds for the payment of the principal or the interest on the bonds. Each revenue bond must contain on its face, and any disclosure document prepared in conjunction with the offer and sale of bonds must include, statements to the effect that:

(a) Neither the state, the municipality, or any other municipal corporation, quasi-municipal corporation, subdivision, or agency of the state is obligated to pay the principal or the interest thereon;

(b) No tax funds or governmental revenue may be used to pay the principal or interest thereon; and

(c) Neither any or all of the faith and credit nor the taxing power of the state, the municipality, or any other municipal corporation, quasi-municipal corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on the revenue bond.

(2) Neither the proceeds of bonds issued under this chapter nor any money used or to be used to pay the principal of, premium, if any, or interest on the bonds constitute public money or property. All of such money must be kept segregated and set apart from funds of the state and any political subdivision of the state and are not subject to appropriation or allotment by the state or subject to the provisions of chapter 43.88 RCW.

(3) Contracts entered into by an authority must be entered into in the name of the authority and not in the name of the state or any political subdivision of the state. The obligations of the authority under such contracts are obligations only of the authority and are not, in any way, obligations of the municipality creating the authority or the state. An authority may incur only those financial obligations which will be paid from revenues received pursuant to financing documents, from fees or charges paid by beneficiaries of the economic development activities funded by the revenue bonds, or from the proceeds of revenue bonds.

**NEW SECTION. Sec. 12.** (1)(a) An authority may enter into financing documents with borrowers regarding bonds issued by the authority that may provide for the payment by each borrower of amounts sufficient, together with other revenues available to the authority, if any, to:

(i) Pay the borrower's share of the fees established by the authority;

(ii) Pay the principal of, premium, if any, and interest on outstanding bonds of the authority issued in respect of such borrower as the same become due and payable; and

(iii) Create and maintain reserves required or provided for by the authority in connection with the issuance of such bonds.

(b) The payments are not subject to supervision or regulation by any department, committee, board, body, bureau, or agency of the state.

(2) All money received by or on behalf of the authority with respect to this issuance of its bonds must be trust funds to be held and applied solely as provided in this chapter. The authority, in lieu of receiving and applying the moneys itself, may enter into trust agreement or indenture with one or more banks or trust companies having the power and authority to conduct trust business in the state to:

(a) Perform all or any part of the obligations of the authority with respect to:

(i) Bonds issued by it;

(ii) The receipt, investment, and application of the proceeds of the bonds and money paid by a participant or available from other sources for the payment of the bonds;

(iii) The enforcement of the obligations of a borrower in connection with the financing or refinancing of any project; and

(iv) Other matters relating to the exercise of the authority's powers under this chapter;

(b) Receive, hold, preserve, and enforce any security interest or evidence of security interest granted by a participant for purposes of securing the payment of the bonds; and

(c) Act on behalf of the authority or the owners of bonds of the authority for purposes of assuring or enforcing the payment of the bonds, when due.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

**NEW SECTION. Sec. 13.** (1) Any owner of bonds issued under this chapter by any authority, and the trustee under any trust agreement or indenture, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any of their respective rights, and may become the purchaser at any foreclosure sale if the person is the highest bidder, except to the extent the rights given are restricted by the authority in any bond resolution or trust agreement or indenture authorizing the issuance of the bonds.

(2) The bonds of an authority are securities in which all public officers and bodies of this state and all counties, cities, municipal corporations, and political subdivisions, all banks, eligible banking organizations, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control. However, a municipality under the auspices of which an authority was created and the county, city, or town within whose planning jurisdiction the economic development activity to be financed lies, may not invest in bonds issued by the authority.

**NEW SECTION. Sec. 14.** This chapter provides a complete, additional, and alternative method for accomplishing the purposes of this chapter and must be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds.

**NEW SECTION. Sec. 15.** Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, or parts thereof, the provisions of this chapter are controlling.

**NEW SECTION. Sec. 16.** Sections 1 through 15 of this act constitute a new chapter in Title 39 RCW.

**NEW SECTION. Sec. 17.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kastama moved that the Senate concur in the House amendment(s) to Second Substitute Senate Bill No. 6140.

Senator Kastama spoke in favor of the motion.

Senator Baumgartner spoke against the motion.

MOTION

On motion of Senator Ericksen, Senator Delvin was excused.

The President Pro Tempore declared the question before the Senate to be the motion by Senator Kastama that the Senate concur in the House amendment(s) to Second Substitute Senate Bill No. 6140.

The motion by Senator Kastama carried and the Senate concurred in the House amendment(s) to Second Substitute Senate Bill No. 6140 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 6140, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 6140, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 33; Nays, 15; Absent, 0; Excused, 1.

Voting yea: Senators Brown, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Parlette, Prentice, Pridemore, Ranker, Regala, Rolfes, Sheldon, Shin, Tom and Zarelli

Voting nay: Senators Baumgartner, Becker, Benton, Carrell, Ericksen, Hill, Holmquist Newbry, Honeyford, Morton, Padden, Pflug, Roach, Schoesler, Stevens and Swecker

Excused: Senator Harper

SECOND SUBSTITUTE SENATE BILL NO. 6140, 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

February 29, 2012

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6237 with the following amendment(s): 6237-S.E AMH APPH H4375.4

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that medical assistants are health professionals specifically trained to work in settings such as physicians' offices, clinics, group practices, and other health care facilities. These multiskilled personnel are trained to perform administrative and clinical procedures under the supervision of health care providers. Physicians value this unique versatility more and more because of the skills of medical assistants and their ability to contain costs and manage human resources efficiently. The demand for medical assistants is expanding rapidly. The efficient and effective delivery of health care in Washington will be improved by recognizing the valuable contributions of medical assistants, and providing statutory support for medical assistants in Washington state. The legislature further finds that rural and small medical practices and clinics may have limited access to formally trained medical assistants. The legislature further intends that the secretary of health develop recommendations for a career ladder that includes medical assistants.

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

(1) "Delegation" means direct authorization granted by a licensed health care practitioner to a medical assistant to perform the functions authorized in this chapter which fall within the scope of practice of the health care provider and the training and experience of the medical assistant.

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

(3) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician and surgeon licensed under chapter 18.57 RCW; or

(c) Acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician assistant licensed under chapter 18.57A RCW, or an optometrist licensed under chapter 18.53 RCW.

(4) "Medical assistant-certified" means a person certified under section 5 of this act who assists a health care practitioner with patient care, executes administrative and clinical procedures, and performs functions as provided in section 6 of this act under the supervision of the health care practitioner.

(5) "Medical assistant-hemodialysis technician" means a person certified under section 5 of this act who performs hemodialysis and other functions pursuant to section 6 of this act under the supervision of a health care practitioner.

(6) "Medical assistant-phlebotomist" means a person certified under section 5 of this act who performs capillary, venous, and arterial invasive procedures for blood withdrawal and other functions pursuant to section 6 of this act under the supervision of a health care practitioner.

(7) "Medical assistant-registered" means a person registered under section 5 of this act who, pursuant to an endorsement by a health care practitioner, clinic, or group practice, assists a health care practitioner with patient care, executes administrative and clinical procedures, and performs functions as provided in section 6 of this act under the supervision of the health care practitioner.

(8) "Secretary" means the secretary of the department of health.

(9) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility. The health care practitioner does not need to be present during procedures to withdraw blood, but must be immediately available.

**NEW SECTION. Sec. 3.** (1) No person may practice as a medical assistant-certified, medical assistant-hemodialysis technician, or medical assistant-phlebotomist unless he or she is certified under section 5 of this act.

(2) No person may practice as a medical assistant-registered unless he or she is registered under section 5 of this act.

**NEW SECTION. Sec. 4.** (1) The secretary shall adopt rules specifying the minimum qualifications for a medical assistant-certified, medical assistant-hemodialysis technician, and medical assistant-phlebotomist. The qualifications for a medical assistant-hemodialysis technician must be equivalent to the qualifications for hemodialysis technicians regulated pursuant to chapter 18.135 RCW as of January 1, 2012.

(2) The secretary shall adopt rules that establish the minimum requirements necessary for a health care practitioner, clinic, or group practice to endorse a medical assistant as qualified to perform the duties authorized by this chapter and be able to file an attestation of that endorsement with the department.

(3) The medical quality assurance commission, the board of osteopathic medicine and surgery, the podiatric medical board, the nursing care quality assurance commission, the board of naturopathy, and the optometry board shall each review and identify other specialty assistive personnel not included in this chapter and the tasks they perform. The department of health shall compile the information from each disciplining authority listed in this subsection and submit the compiled information to the legislature no later than December 15, 2012.

**NEW SECTION. Sec. 5.** (1)(a) The secretary shall issue a certification as a medical assistant-certified to any person who has satisfactorily completed a medical assistant training program approved by the secretary, passed an examination approved by the secretary, and met any additional qualifications established under section 4 of this act.

(b) The secretary shall issue an interim certification to any person who has met all of the qualifications in (a) of this subsection, except for the passage of the examination. A person holding an interim permit possesses the full scope of practice of a medical assistant-certified. The interim permit expires upon passage of the examination or after one year, whichever occurs first, and may not be renewed.

(2) The secretary shall issue a certification as a medical assistant-hemodialysis technician to any person who meets the qualifications for a medical assistant-hemodialysis technician established under section 4 of this act.

(3) The secretary shall issue a certification as a medical assistant-phlebotomist to any person who meets the qualifications for a medical assistant-phlebotomist established under section 4 of this act.

(4)(a) The secretary shall issue a registration as a medical assistant-registered to any person who has a current endorsement from a health care practitioner, clinic, or group practice.

(b) In order to be endorsed under this subsection (4), a person must:

(i) Be endorsed by a health care practitioner, clinic, or group practice that meets the qualifications established under section 4 of this act; and

(ii) Have a current attestation of his or her endorsement to perform specific medical tasks signed by a supervising health care practitioner filed with the department. A medical assistant-registered may only perform the medical tasks listed in his or her current attestation of endorsement.

(c) A registration based on an endorsement by a health care practitioner, clinic, or group practice is not transferrable to another health care practitioner, clinic, or group practice.

(5) A certification issued under subsections (1) through (3) of this section is transferrable between different practice settings.

**NEW SECTION. Sec. 6.** (1) A medical assistant-certified may perform the following duties delegated by, and under the supervision of, a health care practitioner:

(a) Fundamental procedures:

(i) Wrapping items for autoclaving;

(ii) Procedures for sterilizing equipment and instruments;

(iii) Disposing of biohazardous materials; and

(iv) Practicing standard precautions.

(b) Clinical procedures:

(i) Performing aseptic procedures in a setting other than a hospital licensed under chapter 70.41 RCW;

(ii) Preparing of and assisting in sterile procedures in a setting other than a hospital under chapter 70.41 RCW;

(iii) Taking vital signs;

(iv) Preparing patients for examination;

(v) Capillary blood withdrawal, venipuncture, and intradermal, subcutaneous, and intramuscular injections; and

(vi) Observing and reporting patients' signs or symptoms.

(c) Specimen collection:

(i) Capillary puncture and venipuncture;

(ii) Obtaining specimens for microbiological testing; and

(iii) Instructing patients in proper technique to collect urine and fecal specimens.

(d) Diagnostic testing:

(i) Electrocardiography;

(ii) Respiratory testing; and

(iii) Tests waived under the federal clinical laboratory improvement amendments program on the effective date of this section. The department shall periodically update the tests authorized under this subsection (1)(d) based on changes made by the federal clinical laboratory improvement amendments program.

(e) Patient care:

(i) Telephone and in-person screening limited to intake and gathering of information without requiring the exercise of judgment based on clinical knowledge;

(ii) Obtaining vital signs;

(iii) Obtaining and recording patient history;

(iv) Preparing and maintaining examination and treatment areas;

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(v) Preparing patients for, and assisting with, routine and specialty examinations, procedures, treatments, and minor office surgeries;

(vi) Maintaining medication and immunization records; and

(vii) Screening and following up on test results as directed by a health care practitioner.

(f)(i) Administering medications. A medical assistant-certified may only administer medications if the drugs are:

(A) Administered only by unit or single dosage, or by a dosage calculated and verified by a health care practitioner. For purposes of this section, a combination vaccine shall be considered a unit dose;

(B) Limited to legend drugs, vaccines, and Schedule III-V controlled substances as authorized by a health care practitioner under the scope of his or her license and consistent with rules adopted by the secretary under (f)(ii) of this subsection; and

(C) Administered pursuant to a written order from a health care practitioner.

(ii) The secretary may, by rule, limit the drugs that may be administered under this subsection. The rules adopted under this subsection must limit the drugs based on risk, class, or route.

(g) Intravenous injections. A medical assistant-certified may administer intravenous injections for diagnostic or therapeutic agents if he or she meets minimum standards established by the secretary in rule. The minimum standards must be substantially similar to the qualifications for category D and F health care assistants as they exist on the effective date of this section.

(2) A medical assistant-hemodialysis technician may perform hemodialysis when delegated and supervised by a health care practitioner. A medical assistant-hemodialysis technician may also administer drugs and oxygen to a patient when delegated and supervised by a health care practitioner and pursuant to rules adopted by the secretary.

(3) A medical assistant-phlebotomist may perform capillary, venous, or arterial invasive procedures for blood withdrawal when delegated and supervised by a health care practitioner and pursuant to rules adopted by the secretary.

(4) A medical assistant-registered may perform the following duties delegated by, and under the supervision of, a health care practitioner:

(a) Fundamental procedures:

- (i) Wrapping items for autoclaving;
- (ii) Procedures for sterilizing equipment and instruments;
- (iii) Disposing of biohazardous materials; and
- (iv) Practicing standard precautions.

(b) Clinical procedures:

- (i) Preparing for sterile procedures;
- (ii) Taking vital signs;
- (iii) Preparing patients for examination; and
- (iv) Observing and reporting patients' signs or symptoms.

(c) Specimen collection:

- (i) Obtaining specimens for microbiological testing; and
- (ii) Instructing patients in proper technique to collect urine and fecal specimens.

(d) Patient care:

(i) Telephone and in-person screening limited to intake and gathering of information without requiring the exercise of judgment based on clinical knowledge;

(ii) Obtaining vital signs;

(iii) Obtaining and recording patient history;

(iv) Preparing and maintaining examination and treatment areas;

(v) Maintaining medication and immunization records; and

(vi) Screening and following up on test results as directed by a health care practitioner.

(e) Tests waived under the federal clinical laboratory improvement amendments program on the effective date of this section. The department shall periodically update the tests authorized under subsection (1)(d) of this section based on changes made by the federal clinical laboratory improvement amendments program.

(f) Administering vaccines, including combination vaccines.

**NEW SECTION. Sec. 7.** (1) Prior to delegation of any of the functions in section 6 of this act, a health care practitioner shall determine to the best of his or her ability each of the following:

(a) That the task is within that health care practitioner's scope of licensure or authority;

(b) That the task is indicated for the patient;

(c) The appropriate level of supervision;

(d) That no law prohibits the delegation;

(e) That the person to whom the task will be delegated is competent to perform that task; and

(f) That the task itself is one that should be appropriately delegated when considering the following factors:

(i) That the task can be performed without requiring the exercise of judgment based on clinical knowledge;

(ii) That results of the task are reasonably predictable;

(iii) That the task can be performed without a need for complex observations or critical decisions;

(iv) That the task can be performed without repeated clinical assessments; and

(v) That the task, if performed improperly, would not present life-threatening consequences or the danger of immediate and serious harm to the patient.

(2) Nothing in this section prohibits the use of protocols that do not involve clinical judgment and do not involve the administration of medications, other than vaccines.

**NEW SECTION. Sec. 8.** (1) In addition to any other authority provided by law, the secretary may:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Establish forms and procedures necessary to administer this chapter;

(c) Establish administrative procedures, administrative requirements, and fees in accordance with RCW 43.70.250 and 43.70.280. Until July 1, 2016, for purposes of setting fees under this section, the secretary shall consider persons registered or certified under this chapter and health care assistants, certified under chapter 18.135 RCW, as one profession;

(d) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;

(e) Maintain the official department of health record of all applicants and credential holders; and

(f) Establish requirements and procedures for an inactive registration or certification.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of a registration or certification, and the discipline of persons registered or certified under this chapter.

**NEW SECTION. Sec. 9.** (1) The department may not issue new certifications for category C, D, E, or F health care assistants on or after the effective date of this section. The department shall certify a category C, D, E, or F health care assistant who was certified prior to the effective date of this section as a medical assistant-certified when he or she renews his or her certification.

(2) The department may not issue new certifications for category G health care assistants on or after the effective date of this section. The department shall certify a category G health care assistant who was certified prior to the effective date of this section

as a medical assistant-hemodialysis technician when he or she renews his or her certification.

(3) The department may not issue new certifications for category A or B health care assistants on or after the effective date of this section. The department shall certify a category A or B health care assistant who was certified prior to the effective date of this section as a medical assistant-phlebotomist when he or she renews his or her certification.

**NEW SECTION. Sec. 10.** Nothing in this chapter prohibits or affects:

(1) A person licensed under this title performing services within his or her scope of practice;

(2) A person performing functions in the discharge of official duties on behalf of the United States government including, but not limited to, the armed forces, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(3) A person trained by a federally approved end-stage renal disease facility who performs end-stage renal dialysis in the home setting;

(4) A person registered or certified under this chapter from performing blood-drawing procedures in the residences of research study participants when the procedures have been authorized by the institutional review board of a comprehensive cancer center or nonprofit degree-granting institution of higher education and are conducted under the general supervision of a physician; or

(5) A person participating in an externship as part of an approved medical assistant training program under the direct supervision of an on-site health care provider.

**NEW SECTION. Sec. 11.** Within existing resources, the secretary shall develop recommendations regarding a career path plan for medical assistants. The secretary shall consult with stakeholders, including, but not limited to, health care practitioner professional organizations, organizations representing health care workers, community colleges, career colleges, and technical colleges. The recommendations must include methods for including credit for prior learning. The purpose of the plan is to evaluate and map career paths for medical assistants and entry-level health care workers to transition by means of a career ladder into medical assistants or other health care professions. The recommendations must identify barriers to career advancement and career ladder training initiatives. The department shall report its recommendations to the legislature no later than December 15, 2012.

**NEW SECTION. Sec. 12.** An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

**Sec. 13.** RCW 18.79.340 and 2003 c 258 s 2 are each amended to read as follows:

(1) "Nursing technician" means a nursing student employed in a hospital licensed under chapter 70.41 RCW, a clinic, or a nursing home licensed under chapter 18.51 RCW, who:

(a) Is currently enrolled in good standing in a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination from the secretary that there is good cause to continue the registration period, as defined by the secretary in rule.

(2) No person may practice or represent oneself as a nursing technician by use of any title or description of services without being registered under this chapter, unless otherwise exempted by this chapter.

(3) The commission may adopt rules to implement chapter 258, Laws of 2003.

**Sec. 14.** RCW 18.120.020 and 2010 c 286 s 14 are each amended to read as follows:

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

(1) "Applicant group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated professions and occupations: Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW; dispensing opticians under chapter 18.34 RCW; hearing instruments under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW; osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18.71 and 18.71A RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.79 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational therapists licensed under chapter 18.59 RCW; respiratory care practitioners licensed under chapter 18.89 RCW; veterinarians and veterinary technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; East Asian medicine practitioners licensed under chapter 18.06 RCW; persons registered under chapter 18.19 RCW; persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; ~~((and))~~ nursing assistants registered or certified under chapter 18.88A RCW; and medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, and medical assistants- registered certified and registered under chapter 18.--- RCW (the new chapter created in section 19 of this act).

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency.

**Sec. 15.** RCW 18.120.020 and 2012 c ... s 14 (section 14 of this act) are each amended to read as follows:

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

(1) "Applicant group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated professions and occupations: Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW; dispensing opticians under chapter 18.34 RCW; hearing instruments under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under

chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW; osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18.71 and 18.71A RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.79 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational therapists licensed under chapter 18.59 RCW; respiratory care practitioners licensed under chapter 18.89 RCW; veterinarians and veterinary technicians under chapter 18.92 RCW; (~~health care assistants under chapter 18.135 RCW;~~) massage practitioners under chapter 18.108 RCW; East Asian medicine practitioners licensed under chapter 18.06 RCW; persons registered under chapter 18.19 RCW; persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; nursing assistants registered or certified under chapter 18.88A RCW; and medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, and medical assistants- registered certified and registered under chapter 18.--- RCW (the new chapter created in section 19 of this act).

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and,

where provided by law, programs and activities involving less than the full responsibility of a state agency.

**Sec. 16.** RCW 18.130.040 and 2011 c 41 s 11 are each amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Midwives licensed under chapter 18.50 RCW;

(iii) Ocularists licensed under chapter 18.55 RCW;

(iv) Massage operators and businesses licensed under chapter 18.108 RCW;

(v) Dental hygienists licensed under chapter 18.29 RCW;

(vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;

(vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(viii) Respiratory care practitioners licensed under chapter 18.89 RCW;

(ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates--advanced, and social work associates--independent clinical under chapter 18.225 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiii) Health care assistants certified under chapter 18.135 RCW;

(xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvi) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xvii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xviii) Denturists licensed under chapter 18.30 RCW;

(xix) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xx) Surgical technologists registered under chapter 18.215 RCW;

(xxi) Recreational therapists (~~(under chapter 18.230 RCW))~~ under chapter 18.230 RCW;

(xxii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiii) Athletic trainers licensed under chapter 18.250 RCW;

(xxiv) Home care aides certified under chapter 18.88B RCW;

~~(and)~~

(xxv) Genetic counselors licensed under chapter 18.290 RCW; and

(xxvi) Medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, and medical assistants-registered certified and registered under chapter 18.--- RCW (the new chapter created in section 19 of this act).

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) The veterinary board of governors as established in chapter 18.92 RCW; and

(xv) The board of naturopathy established in chapter 18.36A RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

**Sec. 17.** RCW 18.130.040 and 2012 c ... s 16 (section 16 of this act) are each amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Midwives licensed under chapter 18.50 RCW;

(iii) Ocularists licensed under chapter 18.55 RCW;

(iv) Massage operators and businesses licensed under chapter 18.108 RCW;

(v) Dental hygienists licensed under chapter 18.29 RCW;

(vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;

(vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(viii) Respiratory care practitioners licensed under chapter 18.89 RCW;

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

- (ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;
  - (x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates--advanced, and social work associates--independent clinical under chapter 18.225 RCW;
  - (xi) Persons registered as nursing pool operators under chapter 18.52C RCW;
  - (xii) Nursing assistants registered or certified under chapter 18.88A RCW;
  - (xiii) ~~((Health care assistants certified under chapter 18.135 RCW;~~
  - ~~((xiv)))~~ Dietitians and nutritionists certified under chapter 18.138 RCW;
  - ~~((xv)))~~ (xiv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;
  - ~~((xvi)))~~ (xv) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;
  - ~~((xvii)))~~ (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
  - ~~((xviii)))~~ (xvii) Denturists licensed under chapter 18.30 RCW;
  - ~~((xix)))~~ (xviii) Orthotists and prosthetists licensed under chapter 18.200 RCW;
  - ~~((xx))~~ (xix) Surgical technologists registered under chapter 18.215 RCW;
  - ~~((xxi)))~~ (xx) Recreational therapists under chapter 18.230 RCW;
  - ~~((xxii)))~~ (xxi) Animal massage practitioners certified under chapter 18.240 RCW;
  - ~~((xxiii)))~~ (xxii) Athletic trainers licensed under chapter 18.250 RCW;
  - ~~((xxiv)))~~ (xxiii) Home care aides certified under chapter 18.88B RCW;
  - ~~((xxv)))~~ (xxiv) Genetic counselors licensed under chapter 18.290 RCW; and
  - ~~((xxvi)))~~ (xxv) Medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, and medical assistants-registered certified and registered under chapter 18.--- RCW (the new chapter created in section 19 of this act).
- (b) The boards and commissions having authority under this chapter are as follows:
- (i) The podiatric medical board as established in chapter 18.22 RCW;
  - (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
  - (iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;
  - (iv) The board of hearing and speech as established in chapter 18.35 RCW;
  - (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
  - (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
  - (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
  - (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

- (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
- (x) The board of physical therapy as established in chapter 18.74 RCW;
- (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
- (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;
- (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;
- (xiv) The veterinary board of governors as established in chapter 18.92 RCW; and
- (xv) The board of naturopathy established in chapter 18.36A RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

**Sec. 18.** RCW 18.135.055 and 1996 c 191 s 83 are each amended to read as follows:

The health care facility or health care practitioner registering an initial or continuing certification pursuant to the provisions of this chapter shall comply with administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 and 43.70.280. For the purposes of setting fees under this section, the secretary shall consider health care assistants and persons registered and certified under chapter 18.--- RCW (the new chapter created in section 19 of this act) as one profession.

All fees collected under this section shall be credited to the health professions account as required in RCW 43.70.320.

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

**NEW SECTION. Sec. 20.** The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2016:

- (1) RCW 18.135.010 (Practices authorized) and 2009 c 43 s 2, 2008 c 58 s 1, & 1984 c 281 s 1;
- (2) RCW 18.135.020 (Definitions) and 2009 c 43 s 4, 2008 c 58 s 2, 2001 c 22 s 2, & 1997 c 133 s 1;
- (3) RCW 18.135.025 (Rules--Legislative intent) and 1986 c 216 s 1;
- (4) RCW 18.135.030 (Health care assistant profession--Duties--Requirements for certification--Rules) and 1999 c 151 s 201, 1994 sp.s. c 9 s 515, 1991 c 3 s 273, 1986 c 216 s 2, & 1984 c 281 s 4;
- (5) RCW 18.135.035 (Requirements for certification--Military training or experience) and 2011 c 32 s 12;
- (6) RCW 18.135.040 (Certification of health care assistants) and 2006 c 242 s 3 & 1984 c 281 s 3;
- (7) RCW 18.135.050 (Certification by health care facility or practitioner--Roster--Recertification) and 1996 c 191 s 82, 1991 c 3 s 274, & 1984 c 281 s 5;
- (8) RCW 18.135.055 (Registering an initial or continuing certification--Fees) and 2012 c ... s 18 (section 18 of this act), 1996 c 191 s 83, 1991 c 3 s 275, & 1985 c 117 s 1;
- (9) RCW 18.135.060 (Conditions for performing authorized functions--Renal dialysis) and 2001 c 22 s 3, 2000 c 171 s 30, & 1993 c 13 s 1;
- (10) RCW 18.135.062 (Renal dialysis training task force--Development of core competencies) and 2001 c 22 s 4;

March 1, 2012

(11) RCW 18.135.065 (Delegation--Duties of delegator and delegate) and 2009 c 43 s 5, 2008 c 58 s 3, 1991 c 3 s 276, & 1986 c 216 s 4;

(12) RCW 18.135.070 (Complaints--Violations--Investigations-- Disciplinary action) and 1993 c 367 s 11 & 1984 c 281 s 7;

(13) RCW 18.135.090 (Performance of authorized functions) and 1984 c 281 s 9;

(14) RCW 18.135.100 (Uniform Disciplinary Act) and 1993 c 367 s 12;

(15) RCW 18.135.110 (Blood-drawing procedures--Not prohibited by chapter--Requirements) and 2006 c 242 s 2; and

(16) RCW 18.135.120 (Administration of vaccines--Restrictions) and 2008 c 58 s 4.

NEW SECTION. Sec. 21. The secretary of health shall adopt any rules necessary to implement this act.

NEW SECTION. Sec. 22. Sections 1 through 12, 14, 16, and 18 of this act take effect July 1, 2013.

NEW SECTION. Sec. 23. Sections 15 and 17 of this act take effect July 1, 2016."

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. 6237.

Senator Keiser spoke in favor of the motion.

The President Pro Tempore 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. 6237.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 6237 by voice vote.

The President Pro Tempore declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6237, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6237, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 43; Nays, 5; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist Newbry, Honeyford, Morton, Padden and Stevens

Excused: Senator Harper

ENGROSSED SUBSTITUTE SENATE BILL NO. 6237, 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.

The President assumed the chair.

MESSAGE FROM THE HOUSE

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 6254 with the following amendment(s): 6254.E AMH PSEP H4428.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.88.070 and 2007 c 368 s 13 are each amended to read as follows:

(1) A person is guilty of promoting prostitution in the first degree if he or she knowingly advances prostitution;

(a) By compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or

(b) By compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution or profits from prostitution that results from such compulsion.

(2) Promoting prostitution in the first degree is a class B felony."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kline moved that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 6254.

Senator Kline spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kline that the Senate concur in the House amendment(s) to Engrossed Senate Bill No. 6254.

The motion by Senator Kline carried and the Senate concurred in the House amendment(s) to Engrossed Senate Bill No. 6254 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 6254, as amended by the House.

Senator Delvin spoke in favor of final passage.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 6254, 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 Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Harper

ENGROSSED SENATE BILL NO. 6254, 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

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

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

MOTION

Senator Parlette moved adoption of the following resolution:

SENATE RESOLUTION  
8703

By Senators Parlette, Honeyford, Holmquist Newbry, Harper, Fraser, Kastama, Conway, Frockt, Carrell, Padden, and Delvin

WHEREAS, Washington's apple industry is a major contributor to the economic health of both the state and its people; and

WHEREAS, The City of Wenatchee is preparing to celebrate the 93rd annual Washington State Apple Blossom Festival to take place from April 27 through May 6, 2012; and

WHEREAS, The Apple Blossom Festival, which began as a one-day gathering of poetry and song in Wenatchee's Memorial Park, is one of the oldest major festivals in the state, first celebrated in 1919 when Mrs. E. Wagner organized the first Blossom Day; and

WHEREAS, The Apple Blossom Festival celebrates the importance of the apple industry in the Wenatchee Valley and its environs; and

WHEREAS, The Apple Blossom Festival recognizes three young women who by their superior and distinctive efforts have exemplified the spirit and meaning of the Apple Blossom Festival; and

WHEREAS, These three young women are selected to reign over the Apple Blossom Festival and serve as ambassadors to the outlying communities as Princesses and Queen; and

WHEREAS, Devyn Huylar has been selected to represent her community as a 2012 Apple Blossom Princess, in part for her solicitous, compassionate, and optimistic nature, her selfless commitment to helping others and her community, including taking part in organizing fundraisers for local soldiers with disabilities, and her exhilaration and ingenuity as demonstrated through being a senior leader on her cheerleading squad at Eastmont High School and an assistant instructor at the Academy of Dance and Performing Arts; and

WHEREAS, Hayley Brown has been selected to represent her community as a 2012 Apple Blossom Princess, in part for her humor, determination, and vivacious outlook on life, her strong academic performance and passion to succeed, including being a student in Wenatchee High School's Sports Medicine program, a member of the Varsity Golf Team, and being the team captain for Relay for Life, and her passion and earnest love for her family and friends; and

WHEREAS, Samantha Allen has been selected to represent her community as the 2012 Apple Blossom Queen, in part for her insightful, committed, aspiring, and loyal character, her strong academic performance, extracurricular activities, and appetite for adventure, including being a ski instructor at Mission Ridge, a member of Youth United and Vice President of Key Club at Wenatchee High School, and her compassionate and heartfelt love for her family, friends, and community; and

WHEREAS, These three young women all desire to share their proven talents and leadership ambition to serve their community and be an encouragement to those they encounter;

NOW, THEREFORE, BE IT RESOLVED, That the Senate of the State of Washington honor the accomplishments of the members of the Apple Blossom Festival Court and join the City of Wenatchee and the people of the State of Washington in celebrating the Washington State Apple Blossom Festival; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to Queen Samantha Allen, Princess Devyn Huylar, Princess Hayley Brown, and the Board of Directors and Chairs of the Washington State Apple Blossom Festival.

Senators Parlette and Kastama spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8703.

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

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced the 2012 Apple Blossom Royalty Court: Queen Samantha Allen; Princess Hayley Brown; and Princess Devyn Huylar, who were seated at the rostrum.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced Mr. & Mrs. Steve and Irene Soth, chaperones, and royalty who were seated in the gallery.

REMARKS BY QUEENSAMANTHA ALLEN

Miss Allen: "On behalf of Princess Haley Brown and Princess Devyn Huylar and myself I'd would like to thank you for welcoming us. We are honored not only to represent the Washington State Apple Blossom Festival but to share the beauty and character of our Wenatchee Valley. The Valley is truly special, from the embrace of the mountains, to the glittering Columbia River to the ever-present presence sunshine. It seems to come straight from an outdoor enthusiast's dream. As well as being a scenic heavenly with four distinct seasons, the Valley is also heavy affiliated with the fruit industry. With just one stroll through our rolling orchards or charming farmers market you'll know exactly why Wenatchee is known as the apple capital of the world, providing fresh produce to planet earth one crisp and delicious apple at a time. But the most important aspect of the Wenatchee Valley is its people. In part due to our agricultural roots, the Valley houses a wonderful mix of people, cultures and languages, presenting an opportunity to become an area rich in the ways of the world. Our people are also very friendly, making the valley not just a place to live but a friendly and sporting community. Everything that makes the Wenatchee Valley special culminates into our beloved Apple Blossom Festival. Wound in civic pride and celebrating our people and wealth of natural beauty. All the while paying tribute to the fruit industry so essential to our beginnings. Spring 2012 will bring the 93<sup>rd</sup> Apple Blossom Festival, a family-inspired eleven day celebration beginning April 26 and ending May 6. Whether it's the food fair with its mouth-watering aromas, classic entertainment and powerful community vibe or the grand parade with all of its attractions, the most ornate floats in the region, and crisp and brassy marching bands, there's something for everyone to enjoy at Apple Blossom 2012. From our special youth weekend and parade evoking the joys of childhood, to the arts and crafts festival, from your golf tournament and much, much more there are a multitude of fun opportunities for all ages. With the assistance of AppleBlossom.org make your way over to Wenatchee to visit this year's festival actually theme 'Walking on Sunshine'. We cordially invite you to experience a time of family and fun and discover the charm of a small city wrapped in majestic scenery and brimming with individual diversity and talent. We'll even save an apple for you at Festival 2012. See you there."

## INTRODUCTION OF SPECIAL GUESTS

The President welcomed representatives and contestants of the Miss Washington Pageant, escorted by Mrs. Pam Curnel who were seated in the gallery.

## MOTION

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

## MESSAGE FROM THE HOUSE

March 1, 2012

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6328 with the following amendment(s): 6328-S AMH HCW BLAC 133

On page 1, beginning on line 10, after "clinical social workers" strike all material through "license" on line 14 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

## MOTION

Senator Conway moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6328.

Senator Conway spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Conway that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6328.

The motion by Senator Conway carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6328 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6328, as amended by the House.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6328, 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 Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Harper

SUBSTITUTE SENATE BILL NO. 6328, 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 1, 2012

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6354 with the following amendment(s): 6354-S AMH SGTA H4352.1

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** A new section is added to chapter 43.17 RCW to read as follows:

(1) In any instance where a state agency requires that a business submit a document, form, or payment of a fee in paper format, the state agency must provide the business an option to submit such requirement electronically.

(2) A business may authorize a second party to meet the requirements imposed by a state agency under subsection (1) of this section on its behalf.

(3) The director of a state agency or the director's designee may exempt a document, form, or payment of a fee from the requirements of this section if:

(a)(i) There is a legal requirement for such materials to be submitted in paper format; or

(ii) It is not technically or fiscally feasible or practical, or in the best interest of businesses for such materials to be submitted electronically; and

(b) Within existing resources, the director or the director's designee establishes and maintains a process to notify the public regarding such exemptions.

(4) Agencies must add the capability to submit existing documents, forms, and fees electronically as part of their normal operations. New documents, forms, and fees required of a business must be capable of electronic submission within a reasonable time following either their creation or the implementation of the new requirement.

(5) Agencies must document how they plan to transition from paper to electronic forms."

Correct the title

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

## MOTION

Senator Kastama moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6354.

Senator Kastama spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kastama that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6354.

The motion by Senator Kastama carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6354 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6354, as amended by the House.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6354, 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 Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker,

FIFTY SEVENTH DAY, MARCH 5, 2012

Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Harper

SUBSTITUTE SENATE BILL NO. 6354, 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.

The Senate resumed consideration of Substitute Senate Bill No. 6406 which had been deferred earlier in the day.

#### RULING BY THE PRESIDENT

President Owen: "In ruling on the Point of Order raised by Senator Ranker as to whether the striking amendment to Substitute Senate Bill No. 6406 fits within the scope and object of the underlying bill, the President finds and rules as follows.

Substitute Senate Bill No. 6406 presents a challenge between the substitute bill passed by committee and properly substituted on the floor, and a proposed striking amendment. For the purposes of determining whether the striking amendment is outside the scope of the underlying bill, the appropriate comparison is between the substitute bill and the striker.

Substitute Senate Bill No. 6406 is initially described by its intent section. That provision states that the bill's purpose is: "to modify programs that provide for management and protection of the state's natural resources, including the state's forests, fish, and wildlife, in order to streamline regulatory processes and achieve program efficiencies...."

It does this in four different ways: altering provisions relating to hydraulic permits, forest practices, state environmental processes, and the growth management act. These changes affect both state agency processes and local government actions as well.

The substitute bill does not impact storm water provisions. The addition of the storm water provisions are appropriate only if those provisions do not impermissibly alter the bill's scope and object.

Here, the substitute bill approaches what the President has referred to as an omnibus bill. It takes four different substantive areas, altering each one in a manner consistent with the bill's intent section. By adding a fifth area, in a manner consistent with the policies as expressed in the bill, the striking amendment does not broaden the scope and object of the underlying bill.

For these reasons, the President finds that the amendment is within the scope and object of the substitute bill, and Senator Ranker's point of order is not well-taken."

#### MOTION

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

#### MOTION

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

On page 9, after line 23 of the amendment, insert the following:  
"(5) This section expires June 30, 2016."

Senators Hatfield and Hargrove 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 Senator Hatfield and others on

2012 REGULAR SESSION

page 9, after line 23 to the striking amendment to Substitute Senate Bill No. 6406.

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

#### MOTION

Senator Pridemore moved that the following amendment by Senator Pridemore to the striking amendment be adopted:

Beginning on page 40, line 16 of the amendment, strike all of sections 301 through 312

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

On page 61, beginning on line 4 of the title amendment, after "76.09.030," strike all material through "43.21C.095," on line 5 and on line 8, after "adding" strike "new sections" and insert "a new section"

#### WITHDRAWAL OF AMENDMENT

On motion of Senator Pridemore, the amendment by Senator Pridemore on page 40, line 16 to the striking amendment to Substitute Senate Bill No. 6406 was withdrawn.

#### MOTION

Senator Chase moved that the following amendment by Senator Chase and Prentice to the striking amendment be adopted:

On page 42, line 18 of the amendment, after "section;" strike "and"

On page 42, line 19 of the amendment, after "agencies" strike ", tribes,"

On page 42, line 21 of the amendment, after "than chapter 43.21C RCW" insert "; and

(iii) Ensure that federally recognized tribes receive notice about projects that impact tribal interests through notice under chapter 43.21C RCW and means other than chapter 43.21C RCW"

Senators Chase and Hargrove 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 Senator Chase and Prentice on page 42, line 18 to the striking amendment to Substitute Senate Bill No. 6406.

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

#### MOTION

Senator Ranker moved that the following amendment by Senator Ranker to the striking amendment be adopted.

Beginning on page 58, line 9 of the amendment, strike all of section 313

On page 61, line 5 of the title amendment, after "43.21C.110," strike "43.21C.095, and 90.48.260" and insert "and 43.21C.095"

Senators Ranker, Pridemore, Hargrove and Nelson spoke in favor of adoption of the amendment to the striking amendment.

Senator Schoesler spoke against adoption of the amendment to the striking amendment.

Senator Eide 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 Ranker on page 58, line 9 to the striking amendment to Substitute Senate Bill No. 6406.

#### ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Ranker to the striking amendment and the amendment was not adopted by the following vote: Yeas, 22; Nays, 26; Absent, 0; Excused, 1.

Voting yea: Senators Brown, Chase, Conway, Eide, Fain, Fraser, Frockt, Hill, Keiser, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes and Tom

Voting nay: Senators Baumgartner, Becker, Benton, Carrell, Delvin, Ericksen, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Morton, Padden, Parlette, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

Excused: Senator Harper

#### MOTION

Senator Ranker moved that the following amendment by Senator Ranker to the striking amendment be adopted:

Beginning on page 59, line 35 of the amendment, after "(2)" strike all material through "August 1, 2013," on page 60, line 26 and insert "By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of one year any national pollutant discharge elimination system municipal storm water general permit first issued on January 17, 2007, for western Washington municipalities; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit for any permit first issued on January 17, 2007, for western Washington municipalities. An updated permit issued under this subsection shall become effective beginning August 1, 2013."

Senators Ranker, Nelson and Hargrove spoke in favor of adoption of the amendment to the striking amendment.

Senator Schoesler 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 Ranker on page 59, line 35 to the striking amendment to Substitute Senate Bill No. 6406.

The motion by Senator Ranker failed and the amendment to the striking amendment was not adopted by voice vote.

#### MOTION

Senator Pridemore moved that the following amendment by Senator Pridemore to the striking amendment be adopted:

On page 60, after line 35 of the amendment, insert the following:

"(4) Beginning July 1, 2012, those public entities covered by the phase II national pollutant discharge elimination system municipal storm water general permit shall report monthly to the legislature on the progress made toward implementing the permit requirements."

Senator Pridemore spoke in favor of adoption of the amendment to the striking amendment.

Senators Schoesler and Hargrove 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 Pridemore on page 60,

after line 35 to the striking amendment to Substitute Senate Bill No. 6406.

The motion by Senator Pridemore failed and the amendment to the striking amendment was not adopted by voice vote.

#### MOTION

Senator Pridemore moved that the following amendment by Senator Pridemore to the striking amendment be adopted.

On page 60, after line 35 of the amendment, insert the following:

"(4) Within existing resources, the department shall evaluate the provisions of this section regarding compliance with the federal clean water act governing the issuance of discharge permits, including the risk to the state of a successful third-party lawsuit that challenges the state's compliance. The department shall provide its evaluation to the appropriate committees of the legislature by June 30, 2012."

Senators Pridemore and Ranker spoke in favor of adoption of the amendment to the striking amendment.

Senators Schoesler, Hargrove and Ericksen spoke against adoption of the amendment to the striking amendment.

Senator Eide 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 Pridemore on page 60, after line 35 to the striking amendment to Substitute Senate Bill No. 6406.

#### ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Pridemore to the striking amendment and the amendment was not adopted by the following vote: Yeas, 21; Nays, 27; Absent, 0; Excused, 1.

Voting yea: Senators Brown, Chase, Conway, Eide, Fraser, Frockt, Haugen, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Rolfes and Tom

Voting nay: Senators Baumgartner, Becker, Benton, Carrell, Delvin, Ericksen, Fain, Hargrove, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, King, Morton, Padden, Parlette, Pflug, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

Excused: Senator Harper

#### MOTION

Senator Pridemore moved that the following amendment by Senator Pridemore to the striking amendment be adopted:

On page 60, after line 35 of the amendment, insert the following:

"(4) Within existing resources, by June 30, 2012, the department shall report to the appropriate committees of the legislature on the estimated loss of federal and other resources resulting from additional delay in compliance with federal clean water act requirements."

Senators Pridemore and Nelson spoke in favor of adoption of the amendment to the striking amendment.

Senators Schoesler and Hargrove 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 Pridemore on page 60, after line 35 to the striking amendment to Substitute Senate Bill No. 6406.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

The motion by Senator Pridemore failed and the amendment to the striking amendment was not adopted by voice vote.

SUBSTITUTE SENATE BILL NO. 6041,  
 ENGROSSED SENATE BILL NO. 6215,  
 SUBSTITUTE SENATE BILL NO. 6253,  
 SENATE BILL NO. 6256.

The President declared the question before the Senate to be the adoption of the striking amendment as amended by Senators Hargrove and Schoesler to Substitute Senate Bill No. 6406.

MOTION

The motion by Senator Hargrove carried and the striking amendment as amended was adopted by voice vote.

At 12:50 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

MOTION

AFTERNOON SESSION

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

The Senate was called to order at 2:46 p.m. by President Owen.

On page 1, beginning on line 2 of the title, after "resources;" strike the remainder of the title and insert "amending RCW 77.55.021, 77.55.151, 77.55.231, 76.09.040, 76.09.050, 76.09.150, 76.09.065, 76.09.470, 76.09.030, 43.21C.031, 43.21C.229, 82.02.020, 36.70A.490, 36.70A.500, 43.21C.110, 43.21C.095, and 90.48.260; reenacting and amending RCW 77.55.011, 76.09.060, and 76.09.020; adding new sections to chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; adding a new section to chapter 43.30 RCW; adding new sections to chapter 43.21C RCW; creating new sections; prescribing penalties; providing a contingent effective date; and providing expiration dates."

MOTION

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

MOTION

MESSAGE FROM THE HOUSE

March 5, 2012

On motion of Senator Hargrove, the rules were suspended, Engrossed Substitute Senate Bill No. 6406 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

MR. PRESIDENT:

The House receded from its amendment to SUBSTITUTE SENATE BILL NO. 5217 and passed the bill without the House amendment.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

Senators Hargrove and Schoesler spoke in favor of passage of the bill.

MESSAGE FROM THE HOUSE

March 5, 2012

Senators Ranker, Chase, Pridemore and Nelson spoke against passage of the bill.

MR. PRESIDENT:

The House concurred in the Senate amendments to the following bills and passed the bills as amended by the Senate:

SUBSTITUTE HOUSE BILL NO. 1552,  
 SUBSTITUTE HOUSE BILL NO. 1559,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1627,  
 ENGROSSED THIRD SUBSTITUTE HOUSE BILL NO. 1860,

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6406.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6406 and the bill passed the Senate by the following vote: Yeas, 27; Nays, 21; Absent, 0; Excused, 1.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1983,  
 SUBSTITUTE HOUSE BILL NO. 2254,  
 SUBSTITUTE HOUSE BILL NO. 2261,  
 SUBSTITUTE HOUSE BILL NO. 2263,  
 HOUSE BILL NO. 2308,  
 SUBSTITUTE HOUSE BILL NO. 2313,  
 HOUSE BILL NO. 2329,  
 HOUSE BILL NO. 2482,  
 HOUSE BILL NO. 2535,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2567,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2570,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2586.  
 and the same are herewith transmitted.

Voting yea: Senators Baumgartner, Becker, Benton, Carrell, Delvin, Eide, Ericksen, Fain, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, King, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

Voting nay: Senators Brown, Chase, Conway, Fraser, Frockt, Holmquist Newbry, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Padden, Prentice, Pridemore, Ranker, Regala, Rolfes and Tom

BARBARA BAKER, Chief Clerk

Excused: Senator Harper

ENGROSSED SUBSTITUTE SENATE BILL NO. 6406, 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, 2012

SIGNED BY THE PRESIDENT

The President signed:

ENGROSSED SENATE BILL NO. 5159,  
 ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5188,

MR. PRESIDENT:

The House concurred in the Senate amendments to the following bills and passed the bills as amended by the Senate:

SUBSTITUTE HOUSE BILL NO. 1057,  
 SUBSTITUTE HOUSE BILL NO. 2326,  
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO.  
 2337,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2347,  
 HOUSE BILL NO. 2485,  
 HOUSE BILL NO. 2499.  
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 5, 2012

MR. PRESIDENT:

The Speaker has signed:

SENATE BILL NO. 5365,  
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5715,  
 SENATE BILL NO. 5981,  
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5991,  
 SUBSTITUTE SENATE BILL NO. 6002,  
 SENATE BILL NO. 6046,  
 SENATE BILL NO. 6059,  
 SENATE BILL NO. 6098,  
 SUBSTITUTE SENATE BILL NO. 6112,  
 SUBSTITUTE SENATE BILL NO. 6167,  
 SENATE BILL NO. 6171,  
 SUBSTITUTE SENATE BILL NO. 6208,  
 SENATE BILL NO. 6218,  
 ENGROSSED SENATE BILL NO. 6255,  
 SENATE BILL NO. 6290,  
 SUBSTITUTE SENATE BILL NO. 6325,  
 SUBSTITUTE SENATE BILL NO. 6371,  
 ENGROSSED SUBSTITUTE SENATE BILL NO. 6470,  
 SUBSTITUTE SENATE BILL NO. 6574,  
 SUBSTITUTE SENATE JOINT MEMORIAL NO. 8016.  
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 5, 2012

MR. PRESIDENT:

The Speaker has signed:

SUBSTITUTE SENATE BILL NO. 5381,  
 SUBSTITUTE SENATE BILL NO. 5412,  
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5895,  
 SUBSTITUTE SENATE BILL NO. 5966,  
 SUBSTITUTE SENATE BILL NO. 6038,  
 SENATE BILL NO. 6095,  
 SENATE BILL NO. 6131,  
 SUBSTITUTE SENATE BILL NO. 6387,  
 SUBSTITUTE SENATE BILL NO. 6421,  
 ENGROSSED SUBSTITUTE SENATE BILL NO. 6445.  
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 5, 2012

MR. PRESIDENT:

The Speaker has signed:

ENGROSSED HOUSE BILL NO. 1234,  
 SUBSTITUTE HOUSE BILL NO. 1775,  
 SUBSTITUTE HOUSE BILL NO. 2188,  
 SUBSTITUTE HOUSE BILL NO. 2212,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2223,  
 HOUSE BILL NO. 2224,  
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO.  
 2238,  
 SUBSTITUTE HOUSE BILL NO. 2259,  
 HOUSE BILL NO. 2293,  
 HOUSE BILL NO. 2305,  
 SUBSTITUTE HOUSE BILL NO. 2312,  
 ENGROSSED HOUSE BILL NO. 2328,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2341,  
 SUBSTITUTE HOUSE BILL NO. 2354,  
 SUBSTITUTE HOUSE BILL NO. 2360,  
 SUBSTITUTE HOUSE BILL NO. 2389,  
 HOUSE BILL NO. 2420,  
 HOUSE BILL NO. 2456,  
 HOUSE BILL NO. 2459,  
 SUBSTITUTE HOUSE BILL NO. 2492,  
 HOUSE BILL NO. 2523,  
 SUBSTITUTE HOUSE BILL NO. 2541,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2545,  
 SUBSTITUTE HOUSE BILL NO. 2574,  
 SUBSTITUTE HOUSE BILL NO. 2657,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2747.  
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 5, 2012

MR. PRESIDENT:

The Speaker has signed:

SUBSTITUTE HOUSE BILL NO. 1700,  
 ENGROSSED HOUSE BILL NO. 2152,  
 SECOND SUBSTITUTE HOUSE BILL NO. 2156,  
 SUBSTITUTE HOUSE BILL NO. 2191,  
 SUBSTITUTE HOUSE BILL NO. 2299,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2302,  
 HOUSE BILL NO. 2346,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2366,  
 ENGROSSED HOUSE BILL NO. 2469,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2473.  
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 5, 2012

MR. PRESIDENT:

The Speaker has signed:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1820,  
 SUBSTITUTE HOUSE BILL NO. 2194,  
 HOUSE BILL NO. 2195,  
 HOUSE BILL NO. 2210,  
 SECOND SUBSTITUTE HOUSE BILL NO. 2216,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2229,  
 SUBSTITUTE HOUSE BILL NO. 2239,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2301,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2318,

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2502,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2592,  
 ENGROSSED HOUSE BILL NO. 2671,  
 ENGROSSED HOUSE BILL NO. 2814,  
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

SIGNED BY THE PRESIDENT

The President signed:

ENGROSSED HOUSE BILL NO. 1234,  
 SUBSTITUTE HOUSE BILL NO. 1700,  
 SUBSTITUTE HOUSE BILL NO. 1775,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1820,  
 ENGROSSED HOUSE BILL NO. 2152,  
 SECOND SUBSTITUTE HOUSE BILL NO. 2156,  
 SUBSTITUTE HOUSE BILL NO. 2188,  
 SUBSTITUTE HOUSE BILL NO. 2191,  
 SUBSTITUTE HOUSE BILL NO. 2194,  
 HOUSE BILL NO. 2195,  
 HOUSE BILL NO. 2210,  
 SUBSTITUTE HOUSE BILL NO. 2212,  
 SECOND SUBSTITUTE HOUSE BILL NO. 2216,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2223,  
 HOUSE BILL NO. 2224,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2229,  
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2238,  
 SUBSTITUTE HOUSE BILL NO. 2239,  
 SUBSTITUTE HOUSE BILL NO. 2259,  
 HOUSE BILL NO. 2293,  
 SUBSTITUTE HOUSE BILL NO. 2299,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2301,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2302,  
 HOUSE BILL NO. 2305,  
 SUBSTITUTE HOUSE BILL NO. 2312,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2318,  
 ENGROSSED HOUSE BILL NO. 2328,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2341,  
 HOUSE BILL NO. 2346,  
 SUBSTITUTE HOUSE BILL NO. 2354,  
 SUBSTITUTE HOUSE BILL NO. 2360,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2366,  
 SUBSTITUTE HOUSE BILL NO. 2389,  
 HOUSE BILL NO. 2420,  
 HOUSE BILL NO. 2456,  
 HOUSE BILL NO. 2459,  
 ENGROSSED HOUSE BILL NO. 2469,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2473,  
 SUBSTITUTE HOUSE BILL NO. 2492,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2502,  
 HOUSE BILL NO. 2523,  
 SUBSTITUTE HOUSE BILL NO. 2541,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2545,  
 SUBSTITUTE HOUSE BILL NO. 2574,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2592,  
 SUBSTITUTE HOUSE BILL NO. 2657,  
 ENGROSSED HOUSE BILL NO. 2671,  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2747,  
 ENGROSSED HOUSE BILL NO. 2814.

MOTION

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

MOTION

On motion of Senator Frockt, Senators Brown and Hargrove were excused.

SECOND READING  
 CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Fraser moved that Gubernatorial Appointment No. 9228, Harriet Spanel, as a member of the Pacific Marine Fishery Commission, be confirmed.

Senator Fraser spoke in favor of the motion.

MOTION

On motion of Senator Hill, Senator Ericksen was excused.

MOTION

On motion of Senator Hatfield, Senator Hobbs was excused.

APPOINTMENT OF HARRIET SPANEL

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9228, Harriet Spanel as a member of the Pacific Marine Fishery Commission.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9228, Harriet Spanel as a member of the Pacific Marine Fishery Commission and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hatfield, Haugen, Hewitt, Hill, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Ericksen, Hargrove, Harper and Hobbs

Gubernatorial Appointment No. 9228, Harriet Spanel, having received the constitutional majority was declared confirmed as a member of the Pacific Marine Fishery Commission.

MOTION

On motion of Senator Eide, Senators Brown and Kastama were excused.

SECOND READING  
 CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Fraser moved that Gubernatorial Appointment No. 9155, David Troutt, as a member of the Salmon Recovery Funding Board, be confirmed.

Senator Fraser spoke in favor of the motion.

APPOINTMENT OF DAVID TROUTT

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9155, David Troutt as a member of the Salmon Recovery Funding Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9155, David Troutt as a member of the Salmon Recovery Funding Board and the appointment was confirmed by the following vote: Yeas, 44; Nays, 0; Absent, 1; Excused, 4.

Voting yea: Senators Baumgartner, Becker, Benton, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Holmquist Newbry, Honeyford, Keiser, Kilmer, King, Kline, Kohl-Welles, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Litzow

Excused: Senators Brown, Harper, Hobbs and Kastama

Gubernatorial Appointment No. 9155, David Troutt, having received the constitutional majority was declared confirmed as a member of the Salmon Recovery Funding Board.

#### MOTION

On motion of Senator Ericksen, Senator Litzow was excused.

#### SECOND READING

#### CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

#### MOTION

Senator Fain moved that Gubernatorial Appointment No. 9250, Frederick Mendoza, as a member of the Board of Trustees, Highline Community College District No. 9, be confirmed.

Senators Fain and Keiser spoke in favor of passage of the motion.

#### APPOINTMENT OF FREDERICK MENDOZA

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9250, Frederick Mendoza as a member of the Board of Trustees, Highline Community College District No. 9.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9250, Frederick Mendoza as a member of the Board of Trustees, Highline Community College District No. 9 and the appointment was confirmed by the following vote: Yeas, 44; Nays, 1; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Baumgartner

Excused: Senators Brown, Hargrove, Harper and Kastama

Gubernatorial Appointment No. 9250, Frederick Mendoza, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Highline Community College District No. 9.

#### MOTION

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

#### MESSAGE FROM THE HOUSE

March 3, 2012

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6150 with the following amendment(s): 6150-S.E AMH ENGR H4549.E

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 46.20.037 and 2006 c 292 s 1 are each amended to read as follows:

(1) ((No later than two years after full implementation of the provisions of Title II of P.L. 109-13, improved security for driver's licenses and personal identification cards (Real ID), as passed by Congress May 10, 2005.)) The department ((shall)) **may** implement a ((voluntary biometric)) **facial recognition** matching system for ((driver's)) **drivers' licenses, permits, and** identicards. ((A biometric)) **Any facial recognition** matching system ((shall)) **selected by the department must** be used only to verify the identity of an applicant for or holder of a ((renewal or duplicate)) driver's license, permit, or identicard ((by matching a biometric identifier submitted by the applicant against the biometric identifier submitted when the license was last issued. This project requires a full review by the information services board using the criteria for projects of the highest visibility and risk)) to determine whether the person has been issued a driver's license, permit, or identicard under a different name or names.

(2) Any ((**biometric**)) **facial recognition** matching system selected by the department ((**shall**)) **must** be capable of highly accurate matching, and ((**shall**)) **must** be compliant with ((**biometric**)) **appropriate** standards established by the American association of motor vehicle administrators that exist on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(3) ((The biometric matching system selected by the department must incorporate a process that allows the owner of a driver's license or identicard to present a personal identification number or other code along with the driver's license or identicard before the information may be verified by a third party, including a governmental entity.

(4) Upon the establishment of a biometric driver's license and identicard system as described in this section, the department shall allow every person applying for an original, renewal, or duplicate driver's license or identicard to voluntarily submit a biometric identifier. Each applicant shall be informed of all ways in which the biometric identifier may be used, all parties to whom the identifier may be disclosed and the conditions of disclosure, the expected error rates for the biometric matching system which shall be regularly updated as the technology changes or empirical data is collected, and the potential consequences of those errors. The department shall adopt rules to allow applicants to verify the accuracy of the system at the time that biometric information is submitted, including the use of at least two separate devices.

(5) The department may not disclose biometric information to the public or any governmental entity except when authorized by court order.

(6)) The department shall post notices in conspicuous locations at all department driver licensing offices, make written information available to all applicants at department driver licensing offices, and provide information on the department's web site regarding the facial recognition matching system. The notices, written

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

information, and information on the web site must address how the facial recognition matching system works, all ways in which the department may use results from the facial recognition matching system, how an investigation based on results from the facial recognition matching system would be conducted, and a person's right to appeal any determinations made under this chapter.

(4) Results from the facial recognition matching system:

(a) Are not available for public inspection and copying under chapter 42.56 RCW;

(b) May only be disclosed pursuant to a valid subpoena, warrant, or court order;

(c) May only be disclosed to a federal government agency if specifically required under federal law; and

(d) May be disclosed by the department to a government agency, including a court or law enforcement agency, for use in carrying out its functions if the department has determined that person has committed one of the prohibited practices listed in RCW 46.20.0921 and this determination has been confirmed by a hearings examiner under this chapter or the person declined a hearing or did not attend a scheduled hearing.

(5) All ((biometric)) personally identifying information ((shall)) derived from the facial recognition matching system must be stored with appropriate security safeguards((, including but not limited to encryption)). The office of the chief information officer shall develop the appropriate security standards for the department's use of the facial recognition matching system, subject to approval and oversight by the technology services board.

~~((7))~~ (6) The department shall develop procedures to handle instances in which the ((biometric)) facial recognition matching system fails to verify the identity of an applicant for a renewal or duplicate driver's license, permit, or identicard. These procedures ((shall)) must allow an applicant to prove identity without using ((a biometric identifier.

~~(8) Any person who has voluntarily submitted a biometric identifier may choose to discontinue participation in the biometric matching program at any time, provided that the department utilizes a secure procedure to prevent fraudulent requests for a renewal or duplicate driver's license or identicard. When the person discontinues participation, any previously collected biometric information shall be destroyed.~~

~~(9) This section does not apply when an applicant renews his or her driver's license or identicard by mail or electronic commerce)) the facial recognition matching system.~~

(7) The department shall report to the governor and the legislature by October 1st of each year, beginning October 1, 2012, on the following numbers during the previous fiscal year: The number of investigations initiated by the department based on results from the facial recognition matching system; the number of determinations made that a person has committed one of the prohibited practices in RCW 46.20.0921 after the completion of an investigation; the number of determinations that were confirmed by a hearings examiner and the number that were overturned by a hearings examiner; the number of cases where a person declined a hearing or did not attend a scheduled hearing; and the number of determinations that were referred to law enforcement.

**NEW SECTION. Sec. 2.** A new section is added to chapter 46.04 RCW to read as follows:

"Facial recognition matching system" means a system that compares the biometric template derived from an image of an applicant or holder of a driver's license, permit, or identicard with the biometric templates derived from the images in the department's negative file.

**NEW SECTION. Sec. 3.** RCW 46.20.038 (Biometric matching system--Funding) and 2004 c 273 s 4 are each repealed.

**Sec. 4.** RCW 46.20.055 and 2010 c 223 s 1 are each amended to read as follows:

(1) **Driver's instruction permit.** The department may issue a driver's instruction permit with or without a photograph to an applicant who has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, paid ((a)) an application fee of twenty-five dollars, and meets the following requirements:

(a) Is at least fifteen and one-half years of age; or

(b) Is at least fifteen years of age and:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program offered, approved, and accredited by the superintendent of public instruction or offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW, that includes practice driving.

(2) **Waiver of written examination for instruction permit.**

The department may waive the written examination, if, at the time of application, an applicant is enrolled in:

(a) A traffic safety education course as defined by RCW 28A.220.020(2); or

(b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280.

The department may require proof of registration in such a course as it deems necessary.

(3) **Effect of instruction permit.** A person holding a driver's instruction permit may drive a motor vehicle, other than a motorcycle, upon the public highways if:

(a) The person has immediate possession of the permit;

(b) The person is not using a wireless communications device, unless the person is using the device to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property; and

(c) An approved instructor, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

(4) **Term of instruction permit.** A driver's instruction permit is valid for one year from the date of issue.

(a) The department may issue one additional one-year permit.

(b) The department may issue a third driver's permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

(c) A person applying ~~((to renew))~~ for an additional instruction permit must submit the application to the department in person and pay an application fee of twenty-five dollars for each issuance.

**Sec. 5.** RCW 46.20.117 and 2005 c 314 s 305 are each amended to read as follows:

(1) **Issuance.** The department shall issue an identicard, containing a picture, if the applicant:

(a) Does not hold a valid Washington driver's license;

(b) Proves his or her identity as required by RCW 46.20.035; and

(c) Pays the required fee. Except as provided in subsection (5) of this section, the fee is ~~((twenty))~~ forty-five dollars from October 1, 2012, to June 30, 2013, and fifty-four dollars after June 30, 2013, unless an applicant is a recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services. For those persons the fee must be the actual cost of production of the identicard.

(2) **Design and term.** The identicard must:

(a) Be distinctly designed so that it will not be confused with the official driver's license; and

(b) Except as provided in subsection (5) of this section, expire on the ((fifth)) sixth anniversary of the applicant's birthdate after issuance.

(3) **Renewal.** An application for identicard renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her identicard by mail or by electronic commerce when it last expired. ~~((However, the department may accept an application for renewal of an identicard submitted by means of mail or electronic commerce only if specific authority and funding is provided for this purpose by June 30, 2004, in the omnibus transportation appropriations act.))~~

An identicard may not be renewed by mail or by electronic commerce unless the renewal issued by the department includes a photograph of the identicard holder.

(4) **Cancellation.** The department may cancel an identicard if the holder of the identicard used the card or allowed others to use the card in violation of RCW 46.20.0921.

(5) **Alternative issuance/renewal/extension.** The department may issue or renew an identicard for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or may extend by mail or electronic commerce an identicard that has already been issued, in order to evenly distribute, as nearly as possible, the yearly renewal rate of identicard holders. The fee for an identicard issued or renewed for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or that has been extended by mail or electronic commerce, is nine dollars for each year that the identicard is issued, renewed, or extended. The department may adopt any rules as are necessary to carry out this subsection.

**Sec. 6.** RCW 46.20.120 and 2011 c 370 s 4 are each amended to read as follows:

An applicant for a new or renewed driver's license must successfully pass a driver licensing examination to qualify for a driver's license. The department must ensure that examinations are given at places and times reasonably available to the people of this state. If the department does not administer driver licensing examinations as a routine part of its licensing services within a department region because adequate testing sites are provided by driver training schools or school districts within that region, the department shall, at a minimum, administer driver licensing examinations by appointment to applicants eighteen years of age and older in at least one licensing office within that region.

(1) **Waiver.** The department may waive:

(a) All or any part of the examination of any person applying for the renewal of a driver's license unless the department determines that the applicant is not qualified to hold a driver's license under this title; or

(b) All or any part of the examination involving operating a motor vehicle if the applicant:

(i) Surrenders a valid driver's license issued by the person's previous home state; or

(ii) Provides for verification a valid driver's license issued by a foreign driver licensing jurisdiction with which the department has an informal agreement under RCW 46.20.125; and

(iii) Is otherwise qualified to be licensed.

(2) **Fee.** Each applicant for a new license must pay an examination fee of ~~((twenty))~~ thirty-five dollars.

(a) The examination fee is in addition to the fee charged for issuance of the license.

(b) "New license" means a license issued to a driver:

(i) Who has not been previously licensed in this state; or

(ii) Whose last previous Washington license has been expired for more than ~~((five))~~ six years.

(3) An application for driver's license renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her license by mail or by electronic commerce when it last expired.

(4) A person whose license expired or will expire while he or she is living outside the state, may:

(a) Apply to the department to extend the validity of his or her license for no more than twelve months. If the person establishes to the department's satisfaction that he or she is unable to return to Washington before the date his or her license expires, the department shall extend the person's license. The department may grant consecutive extensions, but in no event may the cumulative total of extensions exceed twelve months. An extension granted under this section does not change the expiration date of the license for purposes of RCW 46.20.181. The department shall charge a fee of five dollars for each license extension;

(b) Apply to the department to renew his or her license by mail or, if permitted by the department, by electronic commerce even if subsection (3)(b) of this section would not otherwise allow renewal by that means. If the person establishes to the department's satisfaction that he or she is unable to return to Washington within twelve months of the date that his or her license expires, the department shall renew the person's license by mail or, if permitted by rule of the department, by electronic commerce.

(5) If a qualified person submits an application for renewal under subsection (3)(b) or (4)(b) of this section, he or she is not required to pass an examination nor provide an updated photograph. A license renewed by mail or by electronic commerce that does not include a photograph of the licensee must be labeled "not valid for identification purposes."

(6) Driver training schools licensed by the department under chapter 46.82 RCW may administer the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle.

(7) School districts that offer a traffic safety education program under chapter 28A.220 RCW may administer the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle.

**Sec. 7.** RCW 46.20.161 and 2000 c 115 s 6 are each amended to read as follows:

The department, upon receipt of a fee of ~~((twenty-five))~~ forty-five dollars from October 1, 2012, to June 30, 2013, and fifty-four dollars after June 30, 2013, unless the driver's license is issued for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, in which case the fee shall be ~~((five))~~ nine dollars for each year or partial year that the license is issued, which includes the fee for the required photograph, shall issue to every qualifying applicant a driver's license. A driver's license issued to a person under the age of eighteen is an intermediate license, subject to the restrictions imposed under RCW 46.20.075, until the person reaches the age of eighteen. The license must include a distinguishing number assigned to the licensee, the name of record, date of birth, Washington residence address, photograph, a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

**Sec. 8.** RCW 46.20.181 and 1999 c 308 s 3 are each amended to read as follows:

(1) Except as provided in subsection (4) or (5) of this section or RCW 46.20.105, every driver's license expires on the ~~((fifth))~~ sixth anniversary of the licensee's birthdate following the issuance of the license.

(2) A person may renew his or her license on or before the expiration date by submitting an application as prescribed by the department and paying a fee of ~~((twenty-five))~~ forty-five dollars

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

from October 1, 2012, to June 30, 2013, and fifty-four dollars after June 30, 2013. This fee includes the fee for the required photograph.

(3) A person renewing his or her driver's license more than sixty days after the license has expired shall pay a penalty fee of ten dollars in addition to the renewal fee, unless his or her license expired when:

(a) The person was outside the state and he or she renews the license within sixty days after returning to this state; or

(b) The person was incapacitated and he or she renews the license within sixty days after the termination of the incapacity.

(4) (~~During the period from July 1, 2000, to July 1, 2006,~~) The department may issue or renew a driver's license for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or may extend by mail or electronic commerce a license that has already been issued, in order to evenly distribute, as nearly as possible, the yearly renewal rate of licensed drivers. The fee for a driver's license issued or renewed for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or that has been extended by mail or electronic commerce, is (~~five~~) nine dollars for each year that the license is issued, renewed, or extended. The department may adopt any rules as are necessary to carry out this subsection.

(5) A driver's license that includes a hazardous materials endorsement under chapter 46.25 RCW may expire on an anniversary of the licensee's birthdate other than the sixth year following issuance or renewal of the license in order to match, as nearly as possible, the validity of certification from the federal transportation security administration that the licensee has been determined not to pose a security risk. The fee for a driver's license issued or renewed for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, is nine dollars for each year that the license is issued or renewed, not including any endorsement fees. The department may adjust the expiration date of a driver's license that has previously been issued to conform to the provisions of this subsection if a hazardous materials endorsement is added to the license subsequent to its issuance. If the validity of the driver's license is extended, the licensee must pay a fee of nine dollars for each year that the license is extended.

(6) The department may adopt any rules as are necessary to carry out this section.

**Sec. 9.** RCW 46.20.200 and 2002 c 352 s 14 are each amended to read as follows:

(1) If an instruction permit, identicard, or a driver's license is lost or destroyed, the person to whom it was issued may obtain a duplicate of it upon furnishing proof of such fact satisfactory to the department and payment of a fee of (~~fifteen~~) twenty dollars to the department.

(2) A replacement permit, identicard, or driver's license may be obtained to change or correct material information upon payment of a fee of ten dollars and surrender of the permit, identicard, or driver's license being replaced.

**Sec. 10.** RCW 46.20.049 and 2011 c 227 s 6 are each amended to read as follows:

There shall be an additional fee for issuing any class of commercial driver's license in addition to the prescribed fee required for the issuance of the original driver's license. The additional fee for each class shall be (~~sixty-one~~) eighty-five dollars from October 1, 2012, to June 30, 2013, and one hundred two dollars after June 30, 2013, for the original commercial driver's license or subsequent renewals. If the commercial driver's license is issued, renewed, or extended for a period other than five years from October 1, 2012, to June 30, 2013, or six years after June 30, 2013, the fee for each class shall be (~~twelve~~) seventeen dollars (~~and twenty cents~~) for each

year that the commercial driver's license is issued, renewed, or extended. The fee shall be deposited in the highway safety fund.

**Sec. 11.** RCW 46.20.308 and 2008 c 282 s 2 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504; and

(d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection

(1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section and that the person waives the right to a hearing if he or she receives an ignition interlock driver's license;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a

blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of ~~((two))~~ three hundred seventy-five dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required ~~((two))~~ three hundred seventy-five dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required ~~((two))~~ three hundred seventy-five dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the

suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

**Sec. 12.** RCW 46.20.505 and 2007 c 97 s 1 are each amended to read as follows:

Every person applying for a special endorsement of a driver's license authorizing such person to drive a two or three-wheeled motorcycle or a motor-driven cycle shall pay a fee of five dollars, which is not refundable. In addition, the endorsement fee for the initial motorcycle endorsement shall not exceed ~~((ten))~~ twelve dollars ~~((and))~~, unless the endorsement is issued for a period other than six years, in which case the endorsement fee shall not exceed two dollars for each year the initial motorcycle endorsement is issued. The subsequent renewal endorsement fee shall not exceed ~~((twenty-five))~~ thirty dollars, unless the endorsement is renewed or extended for a period other than ~~((five))~~ six years, in which case the subsequent renewal endorsement fee shall not exceed five dollars for each year that the endorsement is renewed or extended. Fees collected under this section shall be deposited in the motorcycle safety education account of the highway safety fund.

**Sec. 13.** RCW 46.20.105 and 2000 c 115 s 5 are each amended to read as follows:

(1)(a) The department may provide a method to distinguish the driver's license of a person who is under the age of twenty-one from the driver's license of a person who is twenty-one years of age or older.

(b) If the department provides a method to distinguish under (a) of this subsection, any driver's license issued to a person who is under the age of twenty-one expires on the person's twenty-first birthdate.

(2) An instruction permit must be identified as an "instruction permit" and issued in a distinctive form as determined by the department.

(3) An intermediate license must be identified as an "intermediate license" and issued in a distinctive form as determined by the department.

**NEW SECTION. Sec. 14.** A new section is added to chapter 46.68 RCW to read as follows:

(1) The following amounts in aggregate may only be used for the purposes listed in subsection (2) of this section:

(a) Five dollars per year of validity of each fee collected by the department for an identicard under RCW 46.20.117;

(b) Four dollars per year of validity of each fee collected by the department for a driver's license under RCW 46.20.161;

(c) Four dollars and eighty cents per year of validity of each fee collected by the department for a commercial driver's license under RCW 46.20.049;

(d) Five dollars of each fee collected by the department under RCW 46.20.055;

(e) Fifteen dollars of each fee collected by the department under RCW 46.20.120(2);

(f) Five dollars of each fee collected by the department under RCW 46.20.200; and

(g) One hundred seventy-five dollars of each fee collected by the department under RCW 46.20.308.

(2) The fees in subsection (1) of this section may only be used for the following purposes at the following percentages:

(a) Fourteen and one-half percent for highway maintenance;

(b) Fourteen and one-half percent for highway preservation;

(c) Fourteen and one-half percent for street construction and maintenance grants to cities and urban counties;

(d) Fourteen and one-half percent to provide grants for county road improvements;

(e) Twenty-nine percent for state ferry operations;

(f) Three and seven-tenths percent for freight mobility projects; and

(g) Nine and three-tenths percent for grants to improve safety and mobility for children by enabling and encouraging them to walk and bicycle to school.

NEW SECTION. Sec. 15. Sections 4 through 12 and 14 of this act take effect October 1, 2012.

NEW SECTION. Sec. 16. Section 13 of this act takes effect July 1, 2013."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Haugen moved that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6150 and request of the House a conference thereon.

The President declared the question before the Senate to be motion by Senator Haugen that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6150 and request a conference thereon.

The motion by Senator Haugen carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6150 and requested of the House a conference thereon by voice vote.

#### APPOINTMENT OF CONFERENCE COMMITTEE

The President appointed as members of the Conference Committee on Engrossed Substitute Senate Bill No. 6150 and the House amendment(s) thereto: Senators Eide, Haugen and King.

#### MOTION

On motion of Senator Eide, the appointments to the conference committee were confirmed.

#### MESSAGE FROM THE HOUSE

March 3, 2012

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6455 with the following amendment(s): 6455-S.E AMH CLIB H4600.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 46.17.100 and 2010 c 161 s 508 are each amended to read as follows:

Before accepting an application for a certificate of title as required in this title, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a (~~five~~) fifteen dollar application fee in addition to any other

fees and taxes required by law. The certificate of title application fee must be distributed under RCW 46.68.020.

**Sec. 2.** RCW 46.17.140 and 2010 c 161 s 512 are each amended to read as follows:

The penalty for a late transfer under RCW 46.12.650(7) is (~~twenty-five~~) fifty dollars assessed on the sixteenth day after the date of delivery and two dollars for each additional day thereafter, but the total penalty must not exceed one hundred twenty-five dollars. The penalty must be distributed under RCW 46.68.020.

**Sec. 3.** RCW 46.17.200 and 2011 c 171 s 56 are each amended to read as follows:

(1) In addition to all other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge:

(a) The following license plate fees for each license plate, unless the owner or type of vehicle is exempt from payment:

FEE TYPE	FEE	DISTRIBUTION
<u>Original issue</u>	\$ 10.00	<u>RCW 46.68.070</u>
Reflectivity	\$ 2.00	RCW 46.68.070
Replacement	\$ 10.00	RCW 46.68.070
<u>Original issue, motorcycle</u>	\$ 4.00	<u>RCW 46.68.070</u>
Replacement, motorcycle	( <del>\$ 2.00</del> ) <u>\$ 4.00</u>	RCW 46.68.070
Original issue, moped	\$ 1.50	RCW 46.68.070

(b) A license plate retention fee, as required under RCW 46.16A.200(10)(~~(a)(iii)~~) (c), of twenty dollars if the owner wishes to retain the current license plate number upon license plate replacement, unless the owner or type of vehicle is exempt from payment. The twenty dollar fee must be deposited in the multimodal transportation account created in RCW 47.66.070.

(c) A ten dollar license plate transfer fee, as required under RCW 46.16A.200(8)(a), when transferring standard issue license plates from one vehicle to another, unless the owner or type of vehicle is exempt from payment. The ten dollar license plate transfer fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

(d) Former prisoner of war license plates, as described in RCW 46.18.235, may be transferred to a replacement vehicle upon payment of a five dollar license plate fee, in addition to any other fee required by law.

(2) The department may, upon request, provide license plates that have been used and returned to the department to individuals for nonvehicular use. The department may charge a fee of up to five dollars per license plate to cover costs or recovery for postage and handling. The department may waive the fee for license plates used in educational projects and may, by rule, provide standards for the fee waiver and restrictions on the number of license plates provided to any one person. The fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

**Sec. 4.** RCW 46.17.375 and 2010 c 161 s 534 are each amended to read as follows:

(1) Before accepting an application for registration for a recreational vehicle, the department, county auditor or other agent, or subagent appointed by the director (~~shall~~) must require an applicant to pay a (~~three~~) thirteen dollar fee in addition to any other fees and taxes required by law. The state parks support and recreational vehicle sanitary disposal fee must be (~~deposited in the RV account created~~) distributed as provided in RCW 46.68.170.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(2) For the purposes of this section, "recreational vehicle" means a camper, motor home, or travel trailer.

**Sec. 5.** RCW 46.68.170 and 2011 c 367 s 715 are each amended to read as follows:

~~(There is)~~ The director shall forward all proceeds from the state parks support and recreational vehicle sanitary disposal fee imposed under RCW 46.17.375 to the state treasurer to be distributed to the following accounts:

(1) Three dollars to the RV account hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in ~~(said)~~ the account ~~(shall)~~ must be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account to accomplish the purposes identified in this section; and

(2) Ten dollars to the state parks renewal and stewardship account established in RCW 79A.05.215.

**Sec. 6.** RCW 79A.05.215 and 2011 c 320 s 22 are each amended to read as follows:

The state parks renewal and stewardship account is created in the state treasury. Except as otherwise provided in this chapter, all receipts from user fees, concessions, leases, donations collected under RCW 46.16A.090(3), and other state park-based activities ~~(shall)~~ must be deposited into the account. In addition, ten dollars of the fee established in RCW 46.17.375 must be deposited into the account as provided in RCW 46.68.170(2) and may be used by the commission only for the operation and maintenance of state parks that provide access and overnight accommodations to recreational vehicles. The proceeds from the recreation access pass account created in RCW 79A.80.090 must be used for the purpose of operating and maintaining state parks. Except as provided otherwise in this section, expenditures from the account may be used for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship, and other state park purposes. Expenditures from the account may be made only after appropriation by the legislature.

**Sec. 7.** RCW 46.20.293 and 2007 c 424 s 1 are each amended to read as follows:

The department is authorized to provide juvenile courts with the department's record of traffic charges compiled under RCW 46.52.101 and 13.50.200, against any minor upon the request of any state juvenile court or duly authorized officer of any juvenile court of this state. Further, the department is authorized to provide any juvenile court with any requested service which the department can reasonably perform which is not inconsistent with its legal authority which substantially aids juvenile courts in handling traffic cases and which promotes highway safety.

The department is authorized to furnish to the parent, parents, or guardian of any person under eighteen years of age who is not emancipated from such parent, parents, or guardian, the department records of traffic charges compiled against the person and shall collect for the copy a fee of ~~((ten))~~ thirteen dollars, fifty percent of which must be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

**Sec. 8.** RCW 46.29.050 and 2010 c 8 s 9028 are each amended to read as follows:

(1) The department shall upon request furnish any person or his or her attorney a certified abstract of his or her driving record, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved. Such abstract shall (a) indicate the total number of vehicles involved, whether the vehicles

were legally parked or moving, and whether the vehicles were occupied at the time of the accident; and (b) contain reference to any convictions of the person for violation of the motor vehicle laws as reported to the department, reference to any findings that the person has committed a traffic infraction which have been reported to the department, and a record of any vehicles registered in the name of the person. The department shall collect for each abstract the sum of ~~((ten))~~ thirteen dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

(2) The department shall upon request furnish any person who may have been injured in person or property by any motor vehicle, with an abstract of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages. The department shall collect for each abstract the sum of ~~((ten))~~ thirteen dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

**Sec. 9.** RCW 46.52.130 and 2010 c 253 s 1 are each amended to read as follows:

Upon a proper request, the department may furnish an abstract of a person's driving record as permitted under this section.

(1) **Contents of abstract of driving record.** An abstract of a person's driving record, whenever possible, must include:

(a) An enumeration of motor vehicle accidents in which the person was driving, including:

- (i) The total number of vehicles involved;
- (ii) Whether the vehicles were legally parked or moving;
- (iii) Whether the vehicles were occupied at the time of the accident; and

(iv) Whether the accident resulted in a fatality;

(b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(c) The status of the person's driving privilege in this state; and

(d) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(2) **Release of abstract of driving record.** An abstract of a person's driving record may be furnished to the following persons or entities:

(a) **Named individuals.** (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract.

(ii) Nothing in this section prevents a court from providing a copy of the driver's abstract to the individual named in the abstract, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for the production and copying of the abstract for the individual.

(b) **Employers or prospective employers.** (i) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.

(ii) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (A) The employee or prospective employee that authorizes the release of the record; and (B) the employer attesting that the information is

necessary for employment purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(iii) Upon request of the person named in the abstract provided under this subsection, and upon that same person furnishing copies of court records ruling that the person was not at fault in a motor vehicle accident, the department must indicate on any abstract provided under this subsection that the person was not at fault in the motor vehicle accident.

(c) **Volunteer organizations.** (i) An abstract of the full driving record maintained by the department may be furnished to a volunteer organization or an agent for a volunteer organization for which the named individual has submitted an application for a position that would require driving by the individual at the direction of the volunteer organization.

(ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(d) **Transit authorities.** An abstract of the full driving record maintained by the department may be furnished to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(e) **Insurance carriers.** (i) An abstract of the driving record maintained by the department covering the period of not more than the last three years may be furnished to an insurance company or its agent:

(A) That has motor vehicle or life insurance in effect covering the named individual;

(B) To which the named individual has applied; or

(C) That has insurance in effect covering the employer or a prospective employer of the named individual.

(ii) The abstract provided to the insurance company must:

(A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract must show the deferred prosecution as well as the removal.

(iii) Any policy of insurance may not be canceled, nonrenewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agent, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance company or its agent, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(v) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(f) **Alcohol/drug assessment or treatment agencies.** An abstract of the driving record maintained by the department covering the period of not more than the last five years may be furnished to an alcohol/drug assessment or treatment agency approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment, if any, is appropriate, except that the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2), covering a period of not more than the last ten years; and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) **City attorneys and county prosecuting attorneys.** An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys or county prosecuting attorneys. City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) **State colleges, universities, or agencies, or units of local government.** An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031 for employment and risk management purposes.

(i) **Superintendent of public instruction.** An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(3) **Release to third parties prohibited.** Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (i) of this section shall use the abstract exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(4) **Fee.** The director shall collect a ~~((ten))~~ thirteen dollar fee for each abstract of a person's driving record furnished by the department. Fifty percent of the fee must be deposited in the highway safety fund, and fifty percent of the fee must be deposited according to RCW 46.68.038.

(5) **Violation.** (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

**Sec. 10.** RCW 46.70.061 and 2002 c 352 s 23 are each amended to read as follows:

(1) The annual fees for original licenses issued for twelve consecutive months from the date of issuance under this chapter shall be:

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(a) Vehicle dealers, principal place of business for each and every license classification: ~~((Seven))~~ Nine hundred ~~((fifty))~~ seventy-five dollars;

(b) Vehicle dealers, each subagency, and temporary subagency: One hundred dollars;

(c) Vehicle manufacturers: Five hundred dollars.

(2) The annual fee for renewal of any license issued pursuant to this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: ~~((Two))~~ Three hundred ~~((fifty))~~ twenty-five dollars;

(b) Vehicle dealer, each and every subagency: Twenty-five dollars;

(c) Vehicle manufacturers: Two hundred fifty dollars.

If any licensee fails or neglects to apply for such renewal within thirty days after the expiration of the license, or assigned renewal date under a staggered licensing system, the license shall be declared canceled by the director, in which case the licensee will be required to apply for an original license and pay the fee required for the original license.

(3) The fee for the transfer to another location of any license classification issued pursuant to this chapter shall be twenty-five dollars.

(4) The fee for vehicle dealer license plates and manufacturer license plates shall be the amount required by law for vehicle license plates exclusive of excise tax and gross weight and tonnage fees.

(5) All fees collected under this chapter shall be deposited in the state treasury and credited to the motor vehicle fund.

(6) The fees prescribed in this section are in addition to any excise taxes imposed by chapter 82.44 RCW.

**Sec. 11.** RCW 46.70.180 and 2010 c 161 s 1136 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2)(a)(i) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(ii) However, an amount not to exceed ~~((the applicable amount provided in (iii)(A) and (B) of this subsection (2)(a)))~~ one hundred

fifty dollars per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

((iii) A dealer may charge under (a)(ii) of this subsection:

(A) As of July 26, 2009, through June 30, 2014, an amount not to exceed one hundred fifty dollars; and

(B) As of July 1, 2014, an amount not to exceed fifty dollars.)

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The dealer discloses to the purchaser or lessee in writing that the documentary service fee is a negotiable fee. The disclosure must be written in a typeface that is at least as large as the typeface used in the standard text of the document that contains the disclosure and that is bold faced, capitalized, underlined, or otherwise set out from the surrounding material so as to be conspicuous. The dealer shall not represent to the purchaser or lessee that the fee or charge is required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount ~~((provided in (iv)(A) and (B) of this subsection (2)(b)))~~ up to one hundred fifty dollars may be added to the sale price or the capitalized cost(=

~~((A) As of July 26, 2009, through June 30, 2014, an amount up to one hundred fifty dollars; and~~

~~((B) As of July 1, 2014, an amount up to fifty dollars)).~~

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold or leased to a person for a consideration and upon further consideration that the purchaser or lessee agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser or lessee being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract, written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease

provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law, and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

When a dealer informs a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by an electronic mail message, the dealer must also transmit the communication by any additional means;

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer or lessee as part of the purchase price or lease, for any reason except:

(i) Failure to disclose that the vehicle's certificate of title has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.540 and 46.12.560; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, or commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser or lessee, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales or lease agreement signed by the seller and buyer or lessee.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase,

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith;

(c) Encourage, aid, abet, or teach a vehicle dealer to sell or lease vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been sold or leased, distributed for sale or lease, or transferred into this state for resale or

lease by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section.

(17)(a) For a dealer to enter into a new motor vehicle sales contract without disclosing in writing to a buyer of the new motor vehicle, or to a dealer in the case of an unregistered motor vehicle, any known damage and repair to the new motor vehicle if the damage exceeds five percent of the manufacturer's suggested retail price as calculated at the dealer's authorized warranty rate for labor and parts, or one thousand dollars, whichever amount is greater. A manufacturer or new motor vehicle dealer is not required to disclose to a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a new motor vehicle were damaged at any time if the damaged item has been replaced with original or comparable equipment. A replaced part is not part of the cumulative damage required to be disclosed under this subsection.

(b) A manufacturer is required to provide the same disclosure to a dealer of any known damage or repair as required in (a) of this subsection.

(c) If disclosure of any known damage or repair is not required under this section, a buyer may not revoke or rescind a sales contract due to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(d) As used in this section:

(i) "Cosmetic parts" means parts that are attached by and can be replaced in total through the use of screws, bolts, or other fasteners without the use of welding or thermal cutting, and includes windshields, bumpers, hoods, or trim panels.

(ii) "Manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, and includes the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle.

**NEW SECTION. Sec. 12.** A new section is added to chapter 46.68 RCW to read as follows:

(1) The public transportation grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under section 13 of this act.

(2) By the last day of December 2012, March 2013, and June 2013, the state treasurer shall transfer from the multimodal transportation account to the public transportation grant program account one million two hundred fifty thousand dollars.

(3) Beginning September 2013, and by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the public transportation grant program account one million eight hundred seventy-five thousand dollars.

**NEW SECTION. Sec. 13.** A new section is added to chapter 47.66 RCW to read as follows:

(1) The department shall establish a public transportation grant program. The purpose of the grant program is to aid transit authorities, and the grant amounts provided pursuant to this subsection must be used for operations. One hundred percent of the money appropriated for the public transportation grant program must be distributed statewide to transit authorities according to the distribution formula in (a) of this subsection.

(a) Of the grant amounts provided to transit authorities pursuant to this subsection:

(i) One-third must be distributed based on the number of vehicle miles of service provided;

(ii) One-third must be distributed based on the number of vehicle hours of service provided; and

(iii) One-third must be distributed based on the number of passenger trips.

(b) For the purposes of this subsection:

(i) "Transit authorities" has the same meaning as in RCW 9.91.025(2).

(ii) "Vehicle miles of service," "vehicle hours of service," and "passenger trips" are transit service metrics as reported by the public transportation program of the department of transportation in the annual report required in RCW 35.58.2796 for the calendar year that is two years prior to the current fiscal year.

(2) The department must report annually to the transportation committees of the legislature on the use of the grant amounts provided pursuant to this section.

**NEW SECTION. Sec. 14.** A new section is added to chapter 46.68 RCW to read as follows:

(1) Ten dollars of the fee established in RCW 46.17.100 for the purposes of motor change, the transfer of certificates of title, security interest changes, and duplicate certificates of title, and that is deposited to the transportation 2003 account (nickel account) under RCW 46.68.280, must be used for the purposes of paying the debt service on bonds issued for the construction of a second one hundred forty-four car class ferry boat vessel. After the bonds have been retired, the proceeds may be used for other account purposes.

(2) The following must be used for the purposes of initial highway and road project development, including design, preliminary engineering, and rights-of-way acquisition:

(a) Ten dollars of the fee established in RCW 46.17.200(1)(a) for the original issue of motor vehicle license plates;

(b) Four dollars of the fee established in RCW 46.17.200(1)(a) for the original issue of motorcycle license plates;

(c) Two dollars of the fee established in RCW 46.17.200(1)(a) for the issue of replacement motorcycle license plates;

(d) Two hundred twenty-five dollars of the fee established in RCW 46.70.061(1)(a) for the original license of a vehicle dealer's principal place of business; and

(e) Seventy-five dollars of the fee established in RCW 46.70.061(2)(a) for the renewal license of a vehicle dealer's principal place of business.

(3) The following must be used for the purposes of enforcing the driver and vehicle laws and rules of the state:

(a) Three dollars of the fee established in RCW 46.20.293;

(b) Three dollars of the fee established in RCW 46.29.050; and

(c) Three dollars of the fee established in RCW 46.52.130.

**NEW SECTION. Sec. 15.** A new section is added to chapter 46.17 RCW to read as follows:

(1) Before accepting an application for an annual vehicle registration renewal for an electric vehicle that uses propulsion units powered solely by electricity, the department, county auditor or other agent, or subagent appointed by the director must require the applicant to pay a one hundred dollar fee in addition to any other fees and taxes required by law. The one hundred dollar fee is due only at the time of annual registration renewal.

(2) This section only applies to:

(a) A vehicle that is designed to have the capability to drive at a speed of more than thirty-five miles per hour; and

(b) An annual vehicle registration renewal that is due on or after February 1, 2013.

(3)(a) The fee under this section is imposed to provide funds to mitigate the impact of vehicles on state roads and highways and for the purpose of evaluating the feasibility of transitioning from a revenue collection system based on fuel taxes to a road user assessment system, and is separate and distinct from other vehicle license fees. Proceeds from the fee must be used for highway purposes, and must be deposited in the motor vehicle fund created in RCW 46.68.070, subject to (b) of this subsection.

(b) If in any year the amount of proceeds from the fee collected under this section exceeds one million dollars, the excess amount over one million dollars must be deposited as follows:

(i) Seventy percent to the motor vehicle fund created in RCW 46.68.070;

(ii) Fifteen percent to the transportation improvement account created in RCW 47.26.084; and

(iii) Fifteen percent to the rural arterial trust account created in RCW 36.79.020.

**NEW SECTION. Sec. 16.** Section 15 of this act expires on the effective date of legislation enacted by the legislature that imposes a vehicle miles traveled fee or tax.

**NEW SECTION. Sec. 17.** The department of licensing must provide written notice of the expiration date of section 15 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

**Sec. 18.** RCW 46.10.420 and 2010 c 161 s 231 are each amended to read as follows:

(1) Each dealer of snowmobiles in this state shall obtain a snowmobile dealer license from the department in a manner prescribed by the department. Upon receipt of an application for a snowmobile dealer's license and the fee provided in subsection (2) of this section, the dealer is licensed and a snowmobile dealer license number must be assigned.

(2) The annual license fee for a snowmobile dealer is twenty-five dollars, which covers all of the snowmobiles offered by a dealer for sale and not rented on a regular, commercial basis. Snowmobiles rented on a regular commercial basis by a snowmobile dealer must be registered separately under RCW 46.10.310, 46.10.400, 46.10.430, and 46.10.440.

(3) Upon the issuance of a snowmobile dealer license, a snowmobile dealer may purchase, at a cost to be determined by the department, snowmobile dealer license plates of a size and color to be determined by the department. The snowmobile dealer license plates must contain the snowmobile license number assigned to the dealer. Each snowmobile operated by a dealer, dealer representative, or prospective customer for the purposes of demonstration or testing shall display snowmobile dealer license plates in a clearly visible manner.

(4) Only a dealer, dealer representative, or prospective customer may display a snowmobile dealer plate, and only a dealer, dealer representative, or prospective customer may use a snowmobile dealer's license plate for the purposes described in subsection (3) of this section.

(5) Snowmobile dealer licenses are nontransferable.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(6) It is unlawful for any snowmobile dealer to sell a snowmobile at wholesale or retail, or to test or demonstrate any snowmobile, within the state, unless the dealer has a snowmobile dealer license as required under this section.

(7) When a snowmobile is sold by a snowmobile dealer, the dealer:

(a) Shall apply for licensing in the purchaser's name (~~within fifteen days following the sale~~) as provided by rules adopted by the department; and

(b) May issue a temporary license as provided by rules adopted by the department.

**Sec. 19.** RCW 46.12.675 and 2010 c 161 s 316 are each amended to read as follows:

(1) A security interest in a vehicle other than one held as inventory by a manufacturer or a dealer and for which a certificate of title is required is perfected only by:

(a) Complying with the requirements of RCW 46.12.660 or this section;

(b) Receipt by the department, county auditor or other agent, or subagent appointed by the director of:

(i) The existing certificate of title, if any;

(ii) An application for a certificate of title containing the name and address of the secured party; and

(iii) Payment of the required fees.

(2) A security interest is perfected when it is created if the secured party's name and address appear on the most recently issued certificate of title or, if not, it is created when the department, county auditor or other agent, or subagent appointed by the director receives the certificate of title or an application for a certificate of title and the fees required in subsection (1) of this section.

(3) If a vehicle is subject to a security interest when brought into this state, perfection of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest was attached, subject to the following:

(a) The security interest continues perfected in this state if the name of the secured party is shown on the existing certificate of title issued by that jurisdiction. The name of the secured party must be shown on the certificate of title issued for the vehicle by this state. The security interest continues perfected in this state when the department issues the certificate of title.

(b) If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest was attached, it may be perfected in this state. Perfection begins when the department receives the information and fees required in subsection (1) of this section.

(4)(a) After a certificate of title has been issued, the registered owner or secured party must apply to the department, county auditor or other agent, or subagent appointed by the director for a new certificate of title when a security interest is granted on a vehicle. Within ten days after creating a security agreement, the registered owner or secured party must submit:

(i) An application for a certificate of title;

(ii) The certificate of title last issued for the vehicle, or other documentation required by the department; and

(iii) The fee required in RCW 46.17.100.

(b) If satisfied that a certificate of title should be reissued, the department shall change the vehicle record and issue a new certificate of title to the secured party.

(5) A secured party shall release the security interest when the conditions within the security agreement have been met and there is no further secured obligation. The secured party must either:

(a) Assign the certificate of title to the registered owner or the registered owner's designee and send the certificate of title to the department, county auditor or other agent, or subagent appointed by the director with the fee required in RCW 46.17.100; or

(b) Assign the certificate of title to the person acquiring the vehicle from the registered owner with the registered owner's release of interest.

(6) The department shall issue a new certificate of title to the registered owner when the department receives the release of interest and required fees as provided in subsection (5)(a) of this section.

(7) A secured party is liable for one hundred dollars payable to the registered owner or person acquiring the vehicle from the registered owner when:

(a) The secured party fails to either assign the certificate of title to the registered owner or to the person acquiring the vehicle from the registered owner or apply for a new certificate of title within ten days after proper demand; and

(b) The failure of the secured party to act as described in (a) of this subsection results in a loss to the registered owner or person acquiring the vehicle from the registered owner.

**Sec. 20.** RCW 46.16A.320 and 2010 c 161 s 425 are each amended to read as follows:

(1)(a) A vehicle owner may operate an unregistered vehicle on public highways under the authority of a trip permit issued by this state. For purposes of trip permits, a vehicle is considered unregistered if:

(i) Under reciprocal relations with another jurisdiction, the owner would be required to register the vehicle in this state;

(ii) Not registered when registration is required under this chapter;

(iii) The license tabs have expired; or

~~((iii))~~ (iv) The current gross weight license is insufficient for the load being carried. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles or forty thousand pounds for a single unit vehicle with three or more axles.

(b) Trip permits are required to move mobile homes or park model trailers and may only be issued if property taxes are paid in full.

(2) Trip permits may not be:

(a) Issued to vehicles registered under RCW 46.16A.455(5) in lieu of further registration within the same registration year; or

(b) Used for commercial motor vehicles owned by a motor carrier subject to RCW 46.32.080 if the motor carrier's department of transportation number has been placed out of service by the Washington state patrol. A violation of or a failure to comply with this subsection is a gross misdemeanor, subject to a minimum monetary penalty of two thousand five hundred dollars for the first violation and five thousand dollars for each subsequent violation.

(3)(a) Each trip permit authorizes the operation of a single vehicle at the maximum legal weight limit for the vehicle for a period of three consecutive days beginning with the day of first use. No more than three trip permits may be used for any one vehicle in any thirty consecutive day period. No more than two trip permits may be used for any one recreational vehicle, as defined in RCW 43.22.335, in a one-year period. Every trip permit must:

(i) Identify the vehicle for which it is issued;

(ii) Be completed in its entirety;

(iii) Be signed by the operator before operation of the vehicle on the public highways of this state;

(iv) Not be altered or corrected. Altering or correcting data on the trip permit invalidates the trip permit; and

(v) Be displayed on the vehicle for which it is issued as required by the department.

(b) Vehicles operating under the authority of trip permits are subject to all laws, rules, and regulations affecting the operation of similar vehicles in this state.

(4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of each permit for four years.

(5) Trip permits may be obtained from field offices of the department of transportation, department of licensing, county auditors or other agents, and subagents appointed by the department for the fee provided in RCW 46.17.400(1)(h). Exchanges, credits, or refunds may not be given for trip permits after they have been purchased.

the director shall charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) <u>Duplicate certificate of title</u>	<u>\$1.25</u>	<u>RCW 88.02.530(1)(c)</u>	<u>General fund</u>
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
<del>((e))</del> (f) Filing	RCW 46.17.005	RCW <del>((46.17.005))</del> <u>88.02.560(2)</u>	RCW 46.68.400
<del>((f))</del> (g) License plate technology	RCW 46.17.015	RCW <del>((46.17.015))</del> <u>88.02.560(2)</u>	RCW 46.68.370
<del>((g))</del> (h) License service	RCW 46.17.025	RCW <del>((46.17.025))</del> <u>88.02.560(2)</u>	RCW 46.68.220
<del>((h))</del> (i) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (5) of this section
<del>((i))</del> (j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
<del>((j))</del> (k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650
<del>((k))</del> (l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
<del>((l))</del> (m) Title application	\$5.00	RCW 88.02.515	General fund
<del>((m))</del> (n) Transfer	\$1.00	RCW 88.02.560(7)	General fund
<del>((n))</del> (o) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3)(a) The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(i) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

(ii) One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667;

(iii) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

(iv) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(b) If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollars of the derelict vessel and invasive species removal fee that is deposited into the derelict vessel removal

(6) Except as provided in subsection (2)(b) of this section, a violation of or a failure to comply with this section is a gross misdemeanor.

(7) The department may adopt rules necessary to administer this section.

**Sec. 21.** RCW 88.02.640 and 2011 c 326 s 5, 2011 c 171 s 134, and 2011 c 169 s 1 are each reenacted and amended to read as follows:

(1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by

account as authorized in (a)(iv) of this subsection must be suspended for the following fiscal year.

(4) Until January 1, 2014, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge:

(a) Is to address the significant backlog of derelict vessels accumulated in Washington state waters that pose a threat to the health and safety of the people and to the environment;

(b) Is to be used only for the removal of vessels that are less than seventy-five feet in length; and

(c) Must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent or subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540.

NEW SECTION. Sec. 22. Section 4 of this act applies to vehicle registrations that are due or become due on or after October 1, 2012.

NEW SECTION. Sec. 23. Sections 1 through 17 of this act take effect October 1, 2012.

NEW SECTION. Sec. 24. Sections 4 through 6 of this act expire July 1, 2015."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Haugen moved that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6455 and request of the House a conference thereon.

The President declared the question before the Senate to be motion by Senator Haugen that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6455 and request a conference thereon.

The motion by Senator Haugen carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6455 and requested of the House a conference thereon by voice vote.

APPOINTMENT OF CONFERENCE COMMITTEE

The President appointed as members of the Conference Committee on Engrossed Substitute Senate Bill No. 6455 and the House amendment(s) thereto: Senators Eide, Haugen and King.

MOTION

On motion of Senator Eide, the appointments to the conference committee were confirmed.

MESSAGE FROM THE HOUSE

March 3, 2012

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6582 with the following amendment(s): 6582-S.E AMH LIIA H4616.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) It is the intent of the legislature to provide diversified local revenue options that may be tailored to the needs of each jurisdiction. It is also the intent that local governments provide countywide transportation planning and coordinate with other municipalities, transit systems, transportation benefit districts, planning organizations, and other transportation agencies. It is critical that all transportation infrastructure is well planned, coordinated, and maintained at the local levels to provide a seamless transportation infrastructure to enable people and goods to move safely and efficiently throughout the state and to bolster and improve the state's economy.

(2) The legislature finds that the purchasing power of funds to pay for local transportation needs continues to decline while costs have risen. Without additional funding, counties and cities will continue to struggle financially to preserve and maintain county roads, city streets, and bridges; pavement conditions will continue to decline; and public transit systems will be forced to cut services at a time when demand for transit services is increasing.

Sec. 2. RCW 36.73.065 and 2007 c 329 s 1 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of the transportation improvement or improvements proposed by the district and the proposed taxes, fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements.

(2) Voter approval under this section (~~shall~~) must be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW 36.73.015.

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed under this chapter once the taxes, fees, charges, or tolls take effect, unless authorized by the district voters pursuant to RCW 36.73.160 or up to forty dollars of the vehicle fee authorized in RCW 82.80.140 by the governing board of a city transportation benefit district with a population of five hundred thousand or less.

(4)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district, but not including territory in which a fee is currently being collected under RCW 82.80.140, may impose by a majority vote of the governing board of the district the following fees and charges:

(i) Up to twenty dollars of the vehicle fee authorized in RCW 82.80.140; (~~or~~)

(ii) For a city transportation benefit district with a population of five hundred thousand or less, up to forty dollars of the vehicle fee authorized in RCW 82.80.140; or

(iii) A fee or charge in accordance with RCW 36.73.120.

(b) The vehicle fee authorized in (a) of this subsection may only be imposed for a passenger-only ferry transportation improvement if the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district.

(c)(i) A district solely comprised of a city or cities (~~shall~~) may not impose the fees or charges identified in (a) of this subsection within one hundred eighty days after July 22, 2007, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection within the one hundred eighty-day period; or

(ii) A district solely comprised of a city or cities identified in RCW 36.73.020(6)(b) (~~shall~~) may not impose the fees or charges until after May 22, 2008, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection through May 22, 2008.

(5) If the interlocal agreement in RCW 82.80.140(2)(a) cannot be reached, a district that includes only the unincorporated territory of a county may impose by a majority vote of the governing body of the district up to ~~((twenty))~~ forty dollars of the vehicle fee authorized in RCW 82.80.140.

(6) Until June 30, 2015, the additional revenue generated by the vehicle fee authorized in RCW 82.80.140 by the governing board of the district must not be used to supplant existing local transportation funding in the local road operation and maintenance accounts.

**Sec. 3.** RCW 82.80.140 and 2010 c 161 s 917 are each amended to read as follows:

(1) Subject to the provisions of RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose an annual vehicle fee, not to exceed one hundred dollars per vehicle registered in the district, for each vehicle subject to vehicle license fees under RCW 46.17.350(1) (a), (c), (d), (e), (g), (h), (j), or (n) through (q) and for each vehicle subject to gross weight license fees under RCW 46.17.355 with a scale weight of six thousand pounds or less.

(2)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, or a city with a population of over five hundred thousand establishing the district, but not including territory in which a fee is currently being collected under this section, may impose by a majority vote of the governing board of the district up to twenty dollars of the vehicle fee authorized in subsection (1) of this section. A city transportation benefit district with a population of five hundred thousand or less may impose by a majority vote of the governing board of the city transportation benefit district up to forty dollars of the vehicle fee authorized in subsection (1) of this section.

(i) If the district is countywide, the revenues of the fee ~~((shall))~~ must be distributed to each city within the ~~((county))~~ district by interlocal agreement that must be effective prior to imposition of the fee. The interlocal agreement is effective when approved by the ~~((county))~~ district and sixty percent of the cities representing seventy-five percent of the population of the cities within the ~~((county))~~ district in which the countywide fee is collected.

(ii) If the district is less than countywide, the revenues of the fee must be distributed to each city within the district by interlocal agreement that must be effective prior to imposition of the fee.

(b) A district may not impose a fee under this subsection (2):

(i) For a passenger-only ferry transportation improvement unless the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district; or

(ii) That, if combined with the fees previously imposed by another district within its boundaries under RCW 36.73.065(4)(a)(i), exceeds twenty dollars.

(c) If a district imposes or increases a fee under this subsection (2) that, if combined with the fees previously imposed by another district within its boundaries, exceeds twenty dollars, the district shall provide a credit for the previously imposed fees so that the combined vehicle fee does not exceed twenty dollars.

(3) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed one percent of the fees collected, for administration and collection expenses incurred by it. The department shall remit remaining proceeds to the custody of the state treasurer. The state treasurer shall distribute the proceeds to the district on a monthly basis.

(4) No fee under this section may be collected until six months after approval under RCW 36.73.065.

(5) The vehicle fee under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(6) The following vehicles are exempt from the fee under this section:

(a) Campers, as defined in RCW 46.04.085;  
(b) Farm tractors or farm vehicles, as defined in RCW 46.04.180 and 46.04.181;

(c) Mopeds, as defined in RCW 46.04.304;

(d) Off-road and nonhighway vehicles, as defined in RCW 46.04.365;

(e) Private use single-axle trailer, as defined in RCW 46.04.422;

(f) Snowmobiles, as defined in RCW 46.04.546; and

(g) Vehicles registered under chapter 46.87 RCW and the international registration plan.

(7)(a) A county transportation benefit district with a population of one million five hundred thousand or more may use funds derived from the vehicle license fee authorized in this section as a public authority to purchase air space rights and associated rights above transit facilities that include parking facilities and ferry terminals and provide, at no or reduced costs, for nonprofit organizations or public housing authorities to provide, for purchase or lease, affordable workforce housing. For purposes of this subsection, "affordable workforce housing" means housing for a single person, family, or unrelated persons living together whose income is between thirty percent and eighty percent of the median income, adjusted for household size, for the county in which the housing is located. Any commercial use located in these facilities must pay a commercial market rate when purchasing or leasing in one of these facilities.

(b) In furtherance of the public health and welfare and public transportation purposes, a county transportation benefit district with a population of one million five hundred thousand or more, the central Puget Sound regional transit authority, and the Washington state ferries may sell, transfer, exchange, lease, or otherwise dispose of the air rights or other property interests in any parcel of real property owned by such entities, and used and improved by those entities for public transportation facilities, for the development of and use of the air rights and associated property interests for affordable housing so long as any such sale, transfer, exchange, lease, or other disposition of the air rights or other property interests for affordable housing is compatible with the public transportation use of the underlying property or facility.

(c) Any sale, transfer, exchange, lease, or other disposition of air rights and associated property interests made under the authority of this section is exempt from any statutory or other requirement to obtain fair market value, and a sale, transfer, exchange, lease, or other disposition of air rights and associated property interests at less than fair market value made under this section is not invalid, provided that such sale, transfer, exchange, lease, or other disposition of air rights and associated property interests is discounted below fair market value not more than any proportional reduction in value resulting from the requirement for affordable housing.

(d) Any sale, transfer, exchange, lease, or other disposition of air rights and associated property interests to a private entity made under the authority of this section must include a restrictive covenant requiring that any subsequent transfer of the air rights and associated property interests be prohibited unless the property continues to be used for affordable housing purposes for the duration of the term of the restrictive covenant.

(e) Any sale, transfer, exchange, lease, or other disposition of air rights and associated property interests for affordable housing purposes is considered a legitimate public transportation purpose.

**Sec. 4.** RCW 36.73.015 and 2010 c 251 s 2 and 2010 c 105 s 1 are each reenacted and amended to read as follows:

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

(1) "City" means a city or town.

(2) "District" means a transportation benefit district created under this chapter.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(3) "Supplemental transportation improvement" or "supplemental improvement" means any project, work, or undertaking to provide public transportation service, in addition to a district's existing or planned voter-approved transportation improvements, proposed by a participating city member of the district under RCW 36.73.180.

(4) "Transportation improvement" means a project contained in the transportation plan of the state, a regional transportation planning organization, city, county, or eligible jurisdiction as identified in RCW 36.73.020(2). A project may include, but is not limited to, investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of local, regional, or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.

**NEW SECTION. Sec. 5.** A new section is added to chapter 82.80 RCW to read as follows:

(1) A county may impose, by approval of a majority of the registered voters of the county voting on the proposition at a general or special election, a local motor vehicle excise tax of up to one percent annually on the value of every motor vehicle registered to a person residing within the county based on the valuation schedules in RCW 82.44.035. No motor vehicle excise tax may be imposed on vehicles licensed under RCW 46.17.355, except for motor vehicles with an unladen weight of six thousand pounds or less, RCW 46.16A.425, 46.17.335, or 46.17.350(1)(c).

(2) Counties imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a motor vehicle excise tax, with the department of licensing. The department of licensing must administer and collect the tax. The department must deduct a percentage amount, as provided by contract, not to exceed one percent of the taxes collected, for administration and collection expenses incurred by the department. The department must remit the remaining proceeds to the custody of the state treasurer. The state treasurer must distribute the proceeds to the county on a monthly basis.

(3) No tax imposed under this section may be collected until six months after approval.

(4) The tax under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(5) Counties imposing a tax under this section must use the funds in a manner consistent with RCW 35.58.2795, 36.70A.070, and 36.70.330, and chapters 36.73 and 47.80 RCW.

(6)(a) The legislative authority of each county shall convene a meeting with representatives of each city and town located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a ballot measure pursuant to chapter 29A.36 RCW.

(b) The legislative authority of each county that includes a public transit system under chapter 36.57A RCW, 36.56, 35.95A, or 36.57 RCW, or RCW 35.58.2721 or 36.57.100, shall convene a meeting with representatives of the respective transit system for the purpose of establishing a collaborative process that will provide a framework for the adoption of a ballot measure pursuant to chapter 29A.36 RCW.

(7) A county has until December 31, 2013, to impose a local motor vehicle tax of up to one percent, as authorized in this section. If a county does not impose the full one percent of the local motor vehicle excise tax authorized under this section within this time period, the transit systems within that county may impose up to one-half of the county's one percent local motor vehicle excise tax. A county may waive the December 31, 2013, deadline and allow

transit agencies in that county to proceed with imposing a motor vehicle excise tax.

(8) Any county that has implemented a congestion reduction charge under RCW 82.80.055 must sunset the congestion reduction charge prior to the implementation date of the county motor vehicle excise tax imposed in accordance with this section.

(9) Local governments may use all or a part of the local option motor vehicle excise tax revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes.

**NEW SECTION. Sec. 6.** A new section is added to chapter 82.80 RCW to read as follows:

(1)(a) A transit system that receives a waiver from a county pursuant to section 5(7) of this act may impose, by approval of a majority of the registered voters within the boundaries of the transit system voting on the proposition at a general or special election, a local motor vehicle excise tax or greater of up to one-half of one percent annually under section 5 of this act on the value of every motor vehicle registered to a person residing within the transit boundaries based on the valuation schedules in RCW 82.44.035. No motor vehicle excise tax may be imposed on vehicles licensed under RCW 46.17.355, except for motor vehicles with an unladen weight of six thousand pounds or less, RCW 46.16A.425, 46.17.335, or 46.17.350(1)(c).

(b) Beginning January 1, 2014, a transit system may impose, by approval of a majority of the registered voters within the boundaries of the transit system voting on the proposition at a general or special election, a local motor vehicle excise tax or greater of up to one-half of one percent annually under section 5 of this act on the value of every motor vehicle registered to a person residing within the transit boundaries based on the valuation schedules in RCW 82.44.035. No motor vehicle excise tax may be imposed on vehicles licensed under RCW 46.17.355, except for motor vehicles with an unladen weight of six thousand pounds or less, RCW 46.16A.425, 46.17.335, or 46.17.350(1)(c).

(2) Transit systems imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a motor vehicle excise tax, with the department of licensing. The department of licensing must administer and collect the tax. The department must deduct a percentage amount, as provided by contract, not to exceed one percent of the taxes collected, for administration and collection expenses incurred by the department. The department must remit the remaining proceeds to the custody of the state treasurer. The state treasurer must distribute the proceeds to the county on a monthly basis.

(3) No tax imposed under this section may be collected until six months after approval.

(4) The tax under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(5) Transit systems may use all or a part of the local option motor vehicle excise tax revenues authorized in this section for the amortization of local government general obligation and revenue bonds issued for transportation purposes.

**Sec. 7.** RCW 82.80.010 and 2003 c 350 s 1 are each amended to read as follows:

(1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) Subject to the conditions of this section((c)): (a) Any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general

or special election, additional excise taxes equal to ~~((ten percent of the statewide motor vehicle fuel tax rate under RCW 82.36.025))~~ one cent, two cents, or three cents on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the county; and (b) any city with a population of over five hundred thousand may levy, by approval of its legislative body and a majority of the registered voters of the city voting on the proposition at a general or special election, additional excise taxes equal to one cent on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the city. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition ~~((shall))~~ must state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county to the extent that the tax has not been imposed by the city. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax ~~((shall))~~ may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section ~~((shall be))~~ is the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county or city to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county ~~((shall))~~ or city must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer ~~((shall))~~ must distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b) and under the conditions and limitations provided in RCW 82.80.080.

(8) The proceeds of the additional excise taxes levied under this section ~~((shall))~~ must be used strictly for transportation purposes in accordance with RCW 82.80.070.

(9) A county or city may not levy the tax under this section if they are levying the additional fuel tax in RCW 82.80.110 or if they are a member of a regional transportation investment district levying the additional fuel tax in RCW 82.80.120."

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Haugen moved that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6582 and request of the House a conference thereon.

The President declared the question before the Senate to be motion by Senator Haugen that the Senate refuse to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6582 and request a conference thereon.

The motion by Senator Haugen carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6582 and requested of the House a conference thereon by voice vote.

#### APPOINTMENT OF CONFERENCE COMMITTEE

The President appointed as members of the Conference Committee on Engrossed Substitute Senate Bill No. 6582 and the House amendment(s) thereto: Senators Eide, Haugen and King.

#### MOTION

On motion of Senator Eide, the appointments to the conference committee were confirmed.

#### MESSAGE FROM THE HOUSE

February 28, 2012

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6355 with the following amendment(s): 6355-S.E AMH CDH H4416.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.330.080 and 2011 c 286 s 2 are each amended to read as follows:

~~((In carrying out its obligations under RCW 43.330.070,)) (1)(a) The department must ((provide business services training to and)) contract with county-designated associate development organizations to increase the support for and coordination of community and economic development services in communities or regional areas. ((The business services training provided to the organizations contracted with must include, but need not be limited to, training in the fundamentals of export assistance and the services available from private and public export assistance providers in the state. The organizations contracted within each community or regional area must work closely with the department to carry out state identified economic development priorities and must be broadly representative of community and economic interests. The organization must)) The contracting organizations in each community or regional area must:~~

(i) Be broadly representative of community and economic interests;

(ii) Be capable of identifying key economic and community development problems, developing appropriate solutions, and mobilizing broad support for recommended initiatives((The contracting organization must));

(iii) Work closely with the department to carry out state-identified economic development priorities;

(iv) Work with and include local governments, local chambers of commerce, workforce development councils, port districts, labor groups, institutions of higher education, community action programs, and other appropriate private, public, or nonprofit community and economic development groups; and

(v) Meet and share best practices with other associate development organizations at least two times each year.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

~~(b)~~ The scope of services delivered under ~~(these)~~ the contracts required in (a) of this subsection must include two broad areas of work:

~~((4))~~ (i) Direct assistance, including business planning, to companies throughout the county who need support to stay in business, expand, or relocate to Washington from out of state or other countries. Assistance must comply with business recruitment and retention protocols established in RCW 43.330.062, and includes:

~~((a))~~ (A) Working with the appropriate partners throughout the county~~(s)~~ including, but not limited to, local governments, workforce development councils, port districts, community and technical colleges and higher education institutions, export assistance providers, ~~(the Washington manufacturing services)~~ impact Washington, the Washington state quality award council, small business assistance programs, innovation partnership zones, and other federal, state, and local programs to facilitate the alignment of planning efforts and the seamless delivery of business support services within the entire county;

~~((b))~~ (B) Providing information on state and local permitting processes, tax issues, export assistance, and other essential information for operating, expanding, or locating a business in Washington;

~~((c))~~ (C) Marketing Washington and local areas as excellent locations to expand or relocate a business and positioning Washington as a globally competitive place to grow business, which may include developing and executing regional plans to attract companies from out of state;

~~((d))~~ (D) Working with businesses on site location and selection assistance;

~~((e))~~ (E) Providing business retention and expansion services throughout the county~~(including)~~. Such services must include, but are not limited to, business outreach and monitoring efforts to identify and address challenges and opportunities faced by businesses, assistance to trade impacted businesses in applying for grants from the federal trade adjustment assistance for firms program, and the provision of information to businesses on:

(I) Resources available for microenterprise development;

(II) Resources available on the revitalization of commercial districts; and

(III) The opportunity to maintain jobs through shared work programs authorized under chapter 50.60 RCW;

~~((f))~~ (F) Participating in economic development system-wide discussions regarding gaps in business start-up assistance in Washington; ~~(and~~

~~((g))~~ (G) Providing or facilitating the provision of export assistance through workshops or one-on-one assistance; and

(H) Using a web-based information system to track data on business recruitment, retention, expansion, and trade; and

~~((2))~~ (ii) Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies~~(, that support increased living standards and increase foreign direct investment throughout Washington)~~. Research and planning efforts should support increased living standards and increased foreign direct investment, and be aligned with the statewide economic development strategy. Regional associate development organizations retain their independence to address local concerns and goals. Activities include:

~~((a) Participation)~~ (A) Participating in regional planning efforts with workforce development councils involving coordinated strategies around workforce development and economic development policies and programs. Coordinated planning efforts must include, but not be limited to, assistance to industry clusters in the region;

~~((b) Participation between the contracting organization and)~~ (B) Participating with the state board for community and technical colleges as created in RCW 28B.50.050, and any community and technical colleges in ~~(providing for)~~ the coordination of the job skills training program and the customized training program within its region;

~~((c))~~ (C) Collecting and reporting data as specified by the contract with the department for statewide systemic analysis. The department must consult with the Washington state economic development commission in the establishment of such uniform data as is needed to conduct a statewide systemic analysis of the state's economic development programs and expenditures. In cooperation with other local, regional, and state planning efforts, contracting organizations may provide insight into the needs of target industry clusters, business expansion plans, early detection of potential relocations or layoffs, training needs, and other appropriate economic information;

~~((d))~~ (D) In conjunction with other governmental jurisdictions and institutions, participate in the development of a countywide economic development plan, consistent with the state comprehensive plan for economic development developed by the Washington state economic development commission.

(2) The department must provide business services training to the contracting organizations, including but not limited to:

(a) Training in the fundamentals of export assistance and the services available from private and public export assistance providers in the state; and

(b) Training in the provision of business retention and expansion services as required by subsection (1)(b)(i)(E) of this section.

**Sec. 2.** RCW 43.330.082 and 2011 c 286 s 3 are each amended to read as follows:

(1)(a) Contracting associate development organizations must provide the department with measures of their performance and a summary of best practices shared and implemented by the contracting organizations. Annual reports must include ~~((information on the impact of the contracting organization on employment, wages, tax revenue, and capital investment. Specific measures must be developed in the contracting process between the department))~~ the following information to show the contracting organization's impact on employment and overall changes in employment: Current employment and economic information for the community or regional area produced by the employment security department; the net change from the previous year's employment and economic information using data produced by the employment security department; other relevant information on the community or regional area; the amount of funds received by the contracting organization through its contract with the department; the amount of funds received by the contracting organizations through all sources; and the contracting organization's impact on employment through all funding sources. Annual reports may include the impact of the contracting organization on wages, exports, tax revenue, small business creation, foreign direct investment, business relocations, expansions, terminations, and capital investment. Data must be input into a common web-based business information system managed by the department. Specific measures, data standards, and data definitions must be developed in the contracting process between the department, the economic development commission, and the contracting organization every two years. Except as provided in (b) of this subsection, performance measures should be consistent across regions to allow for statewide evaluation.

(b) In addition to the measures required in (a) of this subsection, contracting associate development organizations in counties with a

population greater than one million five hundred thousand persons must include the following measures in reports to the department:

(i) The number of small businesses that received retention and expansion services, and the outcome of those services;

(ii) The number of businesses located outside of the boundaries of the largest city within the contracting associate development organization's region that received recruitment, retention, and expansion services, and the outcome of those services.

(2)(a) The department and contracting associate development organizations must agree upon specific target levels for the performance measures in subsection (1) of this section. Comparison of agreed thresholds and actual performance must occur annually.

(b) Contracting organizations that fail to achieve the agreed performance targets in more than one-half of the agreed measures must develop remediation plans to address performance gaps. The remediation plans must include revised performance thresholds specifically chosen to provide evidence of progress in making the identified service changes.

(c) Contracts and state funding must be terminated for one year for organizations that fail to achieve the agreed upon progress toward improved performance defined under (b) of this subsection. During the year in which termination for nonperformance is in effect, organizations must review alternative delivery strategies to include reorganization of the contracting organization, merging of previous efforts with existing regional partners, and other specific steps toward improved performance. At the end of the period of termination, the department may contract with the associate development organization or its successor as it deems appropriate.

(3) The department must submit a preliminary report to the Washington economic development commission by September 1st of each even-numbered year, and a final report to the legislature and the Washington economic development commission by December 31st of each even-numbered year on the performance results of the contracts with associate development organizations.

(4) Contracting associate development organizations must provide the Washington state economic development commission with information to be used in the comprehensive statewide economic development strategy and progress report due under RCW 43.162.020, by the date determined by the commission.

**Sec. 3.** RCW 43.162.020 and 2011 c 311 s 5 are each amended to read as follows:

(1) The commission must concentrate its major efforts on strategic planning, policy research and analysis, advocacy, evaluation, and promoting coordination and collaboration.

(2) During each regular legislative session, the commission must consult with appropriate legislative committees about the state's economic development needs and opportunities.

(3)(a) By October 1st of each even-numbered year, the commission must submit to the governor and legislature a biennial comprehensive statewide economic development strategy with a report on progress from the previous comprehensive strategy.

(b) The comprehensive statewide economic development strategy must include the industry clusters in the state and the strategic clusters targeted by the commission for economic development efforts. The commission must consult with the workforce training and education coordinating board and include labor market and economic information by the employment security department in developing the list of clusters and strategic clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under chapter 43.330 RCW.

(4)(a) In developing the comprehensive statewide economic development strategy, the commission must use, but may not be limited to: Economic, labor market, and populations trend reports in office of financial management forecasts; the annual state

economic climate report prepared by the economic climate council; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome evaluations; the needs of industry associations, industry clusters, businesses, and employees as evidenced in formal surveys and other input.

(b) The comprehensive statewide economic development strategy may include:

(i) An assessment of the state's economic vitality;

(ii) Recommended goals, objectives, and priorities for the next biennium, and the future;

(iii) A common set of outcomes and benchmarks for the economic development system as a whole;

(iv) Recommendations for removing barriers and promoting collaboration among participants in the innovation ecosystem;

(v) An inventory of existing relevant programs compiled by the commission from materials submitted by agencies;

(vi) Recommendations for expanding, discontinuing, or redirecting existing programs, or adding new programs; and

(vii) Recommendations of best practices and public and private sector roles in implementing the comprehensive statewide economic development strategy.

(c) The report on progress from the previous comprehensive strategy must include information provided by associate development organizations as requested by the commission. The commission may include recommendations for associate development organizations in the report on progress or in the comprehensive statewide economic development strategy.

(5) In developing the biennial statewide economic development strategy, plans, inventories, assessments, and policy research, the commission must consult, collaborate, and coordinate with relevant state agencies, private sector businesses, nonprofit organizations involved in economic development, trade associations, associate development organizations, and relevant local organizations in order to avoid duplication of effort.

(6) State agencies and associate development organizations must cooperate with the commission and provide information as the commission may reasonably request.

(7) The commission must develop a biennial budget request for approval by the office of financial management. The commission must adopt an annual budget and work plan in accordance with the omnibus appropriations bill approved by the legislature.

(8)(a) The commission and its fiscal agent must jointly develop and adopt a memorandum of understanding to outline and establish clear lines of authority and responsibility between them related to budget and administrative services.

(b) The memorandum of understanding may not provide any additional grant of authorities to the commission or the fiscal agent that is not already provided for by statute, nor diminish any authorities or powers granted to either party by statute.

(c) Periodically, but not less often than biannually, the commission and fiscal agent must review the memorandum of understanding and, if necessary, recommend changes to the other party.

(d) As provided generally under RCW 43.162.015, the executive director of the commission must report solely to the governor and the commissioners on matters pertaining to commission operations.

(9) To maintain its objectivity and concentration on strategic planning, policy research and analysis, and evaluation, the commission may not take an administrative role in the delivery of services. However, subject to available resources and consistent with its work plan, the commission or the executive director may conduct outreach activities such as regional forums and best practices seminars.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION  
BARBARA BAKER, Chief Clerk

(10) The commission must evaluate its own performance on a regular basis.

(11) The commission may accept gifts, grants, donations, sponsorships, or contributions from any federal, state, or local governmental agency or program, or any private source, and expend the same for any purpose consistent with this chapter."

Correct the title.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Rolfes moved that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6355.

Senator Rolfes spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Rolfes that the Senate concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6355.

The motion by Senator Rolfes carried and the Senate concurred in the House amendment(s) to Engrossed Substitute Senate Bill No. 6355 by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6355, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6355, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 44; Nays, 2; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Ericksen and Padden

Excused: Senators Hargrove, Harper and Kastama

ENGROSSED SUBSTITUTE SENATE BILL NO. 6355, 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 1, 2012

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6403 with the following amendment(s): 6403-S AMH JUDI HARO 089

On page 1, after line 9, insert:

"Sec. 2. RCW 74.34.140 and 1986 c 187 s 8 are each amended to read as follows:

When an order for protection under RCW 74.34.130 is issued upon request of the petitioner, the court may order a peace officer to assist in the execution of the order of protection. A public agency may not charge a fee for service of process to petitioners seeking relief under this chapter. Petitioners must be provided the necessary number of certified copies at no cost."

Correct the title.

and the same are herewith transmitted.

MOTION

Senator Keiser moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6403.

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 Substitute Senate Bill No. 6403.

The motion by Senator Keiser carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6403 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6403, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6403, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 1; Excused, 3.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Kline

Excused: Senators Hargrove, Harper and Kastama

SUBSTITUTE SENATE BILL NO. 6403, 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 3:26 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 5:24 p.m. by President Owen.

MOTION

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

SECOND READING

SENATE BILL NO. 6073, by Senators Kilmer, Regala, Rolfes and Carrell

Concerning sales and use taxes related to the state route number 16 corridor improvements project.

MOTIONS

On motion of Senator Kilmer, Substitute Senate Bill No. 6073 was substituted for Senate Bill No. 6073 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Kilmer, the rules were suspended, Substitute Senate Bill No. 6073 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.

#### MOTION

On motion of Senator Ranker, Senator Brown was excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6073.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6073 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 3; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Honeyford, Padden and Schoesler

Excused: Senator Harper

SUBSTITUTE SENATE BILL NO. 6073, 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. 6277, by Senators Conway, Becker, Kastama, Schoesler, Kilmer, Kohl-Welles and Regala

Creating authority for counties to exempt from property taxation new and rehabilitated multiple-unit dwellings in certain unincorporated urban centers.

#### MOTIONS

On motion of Senator Conway, Substitute Senate Bill No. 6277 was substituted for Senate Bill No. 6277 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Conway, the rules were suspended, Substitute Senate Bill No. 6277 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Conway 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. 6277.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6277 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 3; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug,

Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist Newbry, Honeyford and Schoesler

Excused: Senator Harper

SUBSTITUTE SENATE BILL NO. 6277, 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 SENATE BILL NO. 5250, by Senate Committee on Transportation (originally sponsored by Senators Haugen, King, White and Swecker)

Concerning the design-build procedure for certain projects.

#### MOTION

On motion of Senator Haugen, Second Substitute Senate Bill No. 5250 was substituted for Substitute Senate Bill No. 5250 and the second substitute bill was placed on the second reading and read the second time.

#### MOTION

Senator Haugen moved that the following amendment by Senators Haugen and King be adopted:

On page 1, beginning on line 7, after "contracts" strike "from department funds dedicated to highway improvements"

Senator Haugen 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 Haugen and King on page 1, line 7 to Second Substitute Senate Bill No. 5250.

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

#### MOTION

On motion of Senator Haugen, the rules were suspended, Engrossed Second Substitute Senate Bill No. 5250 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Haugen and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5250.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 5250 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Baumgartner

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

Excused: Senator Harper

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5250, 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. 6581, by Senator Murray

Eliminating accounts and funds.

MOTIONS

On motion of Senator Murray, Substitute Senate Bill No. 6581 was substituted for Senate Bill No. 6581 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Murray, the rules were suspended, Substitute Senate Bill No. 6581 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray 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. 6581.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6581 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist Newbry and Stevens

Excused: Senator Harper

SUBSTITUTE SENATE BILL NO. 6581, 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. 6607, by Senators Kilmer, Frockt, Kastama, Hatfield, Harper, Hargrove, Hill, Murray, Becker, Hobbs and Hewitt

Instituting policies to reduce the central service costs of state government.

MOTION

On motion of Senator Kilmer, Substitute Senate Bill No. 6607 was substituted for Senate Bill No. 6607 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Kilmer moved that the following striking amendment by Senators Kilmer, Murray and Zarelli be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 43.19 RCW to read as follows:

The office of the chief information officer, in consultation with the department of enterprise services, shall develop a state policy on the purchasing and use of cellular telephone communications devices and services, to be applicable to all agencies of state government except institutions of higher education. The department shall develop master contracts for cellular communications that include the best available cost-savings plans and improve statewide contractor reporting to lower costs. To improve purchasing efficiencies, the state policy and master contracts may authorize state agencies to purchase prepaid cellular communications services.

The state policy and master contracts shall seek to reduce the unnecessary use of cellular communications and minimize the costs associated with such communications. The state policy shall establish appropriate reduction goals and implement performance measurements.

Sec. 2. RCW 40.07.040 and 2005 c 274 s 276 are each amended to read as follows:

(1) The ~~((governor or the governor's designee))~~ department of enterprise services shall take such ~~((other))~~ action as may be necessary to maximize the economy, efficiency, and effectiveness of state publications and state mailings and to do so may eliminate, consolidate, or simplify state agency publications and mailings.

(2) The department of enterprise services, in consultation with the office of the chief information officer, shall develop a state policy on the purchasing and use of state agency mailings, to be applicable to all agencies of state government except institutions of higher education. The state policy shall seek to reduce the unnecessary use of state mailings, minimize the costs associated with such communications, and replace state mailings with electronic communications where possible and effective. The state policy shall establish appropriate reduction goals and implement performance measurements. In addition, the department shall periodically review state statutes that mandate agency mailings and recommend reductions where appropriate.

(3) Nothing in this chapter shall be construed in any way as restricting public access to public records or the public right to copy such records as provided by chapter 42.56 RCW.

Sec. 3. RCW 43.19.742 and 2011 1st sp.s. c 43 s 312 are each amended to read as follows:

To improve the efficiency and minimize the costs of agency-based printing, the department shall establish rules and guidelines for all agencies to use in managing their printing operations, including both agency-based printing and those jobs that require the services of a print shop, as based on the successes of implementation of existing print management programs in state agencies. At a minimum, the rules and guidelines must implement managed print strategies to track, manage, and reduce agency-based printing.

The department shall develop a state policy on the use of agency-based printing, to be applicable to all agencies of state government except institutions of higher education. The state policy shall seek to reduce the unnecessary use of agency print shops and agency-based printing and minimize the costs associated with state print operations. The state policy shall establish appropriate reduction goals and implement performance measurements.

Sec. 4. RCW 43.19.565 and 2011 1st sp.s. c 43 s 231 are each amended to read as follows:

The department shall establish a motor vehicle transportation service which is hereby empowered to:

(1) Provide suitable motor vehicle transportation services to state agencies on either a temporary or permanent basis and upon such demonstration of need as the department may require;

(2) Provide motor pools for the use of state agencies located in the Olympia area and such additional motor pools at other locations in the state as may be necessary to provide economic, efficient, and effective motor vehicle transportation services to state agencies. Such additional motor pools may be under either the direct control of the department or under the supervision of another state agency by agreement with the department;

(3) Establish an equitable schedule of rental and mileage charges to agencies for motor vehicle transportation services furnished which shall be designed to provide funds to recover the actual total costs of motor pool operations including but not limited to vehicle operation expense, depreciation expense, overhead, and nonrecoverable collision or other damage to vehicles; and

(4) Establish guidelines, procedures, and standards for fleet operations that other state agencies and institutions of higher education may adopt. The guidelines, procedures, and standards shall be consistent with and carry out the objectives of any general policies adopted by the office of financial management under RCW 43.41.130.

The department shall develop a state policy on the acquisition of motor vehicles, to be applicable to all agencies and institutions of state government. The state policy shall seek to reduce the long-term costs of motor vehicle ownership and operation by performing a life-cycle cost analysis that considers, among other factors, the initial purchase cost and the costs of maintenance and operation including, where appropriate and cost-effective, fuel efficiency. The state policy shall establish appropriate cost reduction goals and implement performance measurements.

Unless otherwise determined by the director after consultation with the office of financial management, vehicles owned and managed by the department of transportation, the department of natural resources, and the Washington state patrol are exempt from the requirements of subsections (1), (2), and (4) of this section.

NEW SECTION. **Sec. 5.** The office of financial management and the department of enterprise services shall jointly establish a work group on central services rate methodology to examine the methods by which the costs of state agency central services are allocated among the agencies and institutions of state government. The objective of the work group is to recommend a central services rate methodology that achieves more efficient, cost-effective, and transparent use of state resources for central services, including state agency legal services, agency audits, archives and records management, and services provided to state agencies by the department of enterprise services and the consolidated technology services agency.

The joint work group shall include representatives of the office of financial management, the department of enterprise services, the attorney general's office, the office of the secretary of state, the state auditor's office, the consolidated technology services agency, and staff of the ways and means committees of the senate and house of representatives. Administrative support of the work group shall be provided by the department of enterprise services.

The joint work group shall report its findings to the governor and the legislative fiscal committees by September 1, 2012."

Senator Kilmer 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 Senators Kilmer, Murray and Zarelli to Substitute Senate Bill No. 6607.

The motion by Senator Kilmer 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 1 of the title, after "government;" strike the remainder of the title and insert "amending RCW 40.07.040, 43.19.742, and 43.19.565; adding a new section to chapter 43.19 RCW; and creating a new section."

## MOTION

On motion of Senator Kilmer, the rules were suspended, Engrossed Substitute Senate Bill No. 6607 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. 6607.

## ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6607 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Harper

ENGROSSED SUBSTITUTE SENATE BILL NO. 6607, 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 JOINT RESOLUTION NO. 8221, by Senators Parlette, Kilmer, Benton, Murray, Brown, King, Hewitt, Becker and Morton

Amending the Constitution to include the recommendations of the commission on state debt.

The measure was read the second time.

## MOTION

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

Beginning on page 1, line 8, strike all material through "state." on page 5, line 13 and insert the following:

"Article VIII, section 1. (a) The state may contract debt, the principal of which shall be paid and discharged within thirty years from the time of contracting thereof, in the manner set forth herein.

(b) The aggregate debt contracted by the state, as calculated by the treasurer at the time debt is contracted, shall not exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than ~~((nine percent))~~ the applicable percentage limit of the arithmetic mean of its general state revenues for the ~~((three))~~ six immediately preceding fiscal years as certified

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

by the treasurer. The term "applicable percentage limit" means eight and one-half percent from July 1, 2014, through June 30, 2016; eight and one-quarter percent from July 1, 2016, through June 30, 2034; eight percent from July 1, 2034, and thereafter. The term "fiscal year" means that period of time commencing July 1 of any year and ending on June 30 of the following year.

(c) The term "general state revenues," when used in this section, shall include all state money received in the treasury from each and every source (~~whatsoever except~~), including moneys received from ad valorem taxes levied by the state and deposited in the general fund in each fiscal year, but not including: (1) Fees and other revenues derived from the ownership or operation of any undertaking, facility, or project; (2) Moneys received as gifts, grants, donations, aid, or assistance or otherwise from the United States or any department, bureau, or corporation thereof, or any person, firm, or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid, or assistance require the application and disbursement of such moneys otherwise than for the general purposes of the state of Washington; (3) Moneys to be paid into and received from retirement system funds, and performance bonds and deposits; (4) Moneys to be paid into and received from trust funds (~~including but not limited to moneys received from taxes levied for specific purposes~~) and the several permanent and irreducible funds of the state and the moneys derived therefrom but excluding bond redemption funds; (5) Moneys received from taxes levied for specific purposes and required to be deposited for those purposes into specified funds or accounts other than the general fund; and (6) Proceeds received from the sale of bonds or other evidences of indebtedness.

(d) In computing the amount required for payment of principal and interest on outstanding debt under this section, debt shall be construed to mean borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be repaid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation, or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, but shall not include obligations for the payment of current expenses of state government, nor shall it include debt hereafter incurred pursuant to section 3 of this article, obligations guaranteed as provided for in subsection (g) of this section, principal of bond anticipation notes or obligations issued to fund or refund the indebtedness of the Washington state building authority. In addition, for the purpose of computing the amount required for payment of interest on outstanding debt under subsection (b) of this section and this subsection, "interest" shall be reduced by subtracting the amount scheduled to be received by the state as payments from the federal government in each year in respect of bonds, notes, or other evidences of indebtedness subject to this section.

(e) The state may pledge the full faith, credit, and taxing power of the state to guarantee the voter approved general obligation debt of school districts in the manner authorized by the legislature. Any such guarantee does not remove the debt obligation of the school district and is not state debt.

(f) The state may, without limitation, fund or refund, at or prior to maturity, the whole or any part of any existing debt or of any debt hereafter contracted pursuant to section 1, section 2, or section 3 of this article, including any premium payable with respect thereto and interest thereon, or fund or refund, at or prior to maturity, the whole or any part of any indebtedness incurred or authorized prior to the effective date of this amendment by any entity of the type described in subsection (h) of this section, including any premium payable

with respect thereto and any interest thereon. Such funding or refunding shall not be deemed to be contracting debt by the state.

(g) Notwithstanding the limitation contained in subsection (b) of this section, the state may pledge its full faith, credit, and taxing power to guarantee the payment of any obligation payable from revenues received from any of the following sources: (1) Fees collected by the state as license fees for motor vehicles; (2) Excise taxes collected by the state on the sale, distribution or use of motor vehicle fuel; and (3) Interest on the permanent common school fund: *Provided*, That the legislature shall, at all times, provide sufficient revenues from such sources to pay the principal and interest due on all obligations for which said source of revenue is pledged.

(h) No money shall be paid from funds in custody of the treasurer with respect to any debt contracted after the effective date of this amendment by the Washington state building authority, the capitol committee, or any similar entity existing or operating for similar purposes pursuant to which such entity undertakes to finance or provide a facility for use or occupancy by the state or any agency, department, or instrumentality thereof.

(i) The legislature shall prescribe all matters relating to the contracting, funding or refunding of debt pursuant to this section, including: The purposes for which debt may be contracted; by a favorable vote of three-fifths of the members elected to each house, the amount of debt which may be contracted for any class of such purposes; the kinds of notes, bonds, or other evidences of debt which may be issued by the state; and the manner by which the treasurer shall determine and advise the legislature, any appropriate agency, officer, or instrumentality of the state as to the available debt capacity within the limitation set forth in this section. The legislature may delegate to any state officer, agency, or instrumentality any of its powers relating to the contracting, funding or refunding of debt pursuant to this section except its power to determine the amount and purposes for which debt may be contracted.

(j) The full faith, credit, and taxing power of the state of Washington are pledged to the payment of the debt created on behalf of the state pursuant to this section and the legislature shall provide by appropriation for the payment of the interest upon and installments of principal of all such debt as the same falls due, but in any event, any court of record may compel such payment.

(k) Notwithstanding the limitations contained in subsection (b) of this section, the state may issue certificates of indebtedness in such sum or sums as may be necessary to meet temporary deficiencies of the treasury, to preserve the best interests of the state in the conduct of the various state institutions, departments, bureaus, and agencies during each fiscal year; such certificates may be issued only to provide for appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of incurrence.

(l) Bonds, notes, or other obligations issued and sold by the state of Washington pursuant to and in conformity with this article shall not be invalid for any irregularity or defect in the proceedings of the issuance or sale thereof and shall be incontestable in the hands of a bona fide purchaser or holder thereof.

BE IT FURTHER RESOLVED, That the amendments to Article VIII, Section 1, if approved and ratified by the qualified voters of the state, shall be effective on and after July 1, 2014.

BE IT FURTHER RESOLVED, That the statement of subject and concise description for the ballot title of this constitutional amendment shall read "The legislature has proposed a constitutional amendment on implementing the Commission on State Debt recommendations regarding Washington's debt limit. This amendment would, starting July 1, 2014, phase-down the debt limit percentage in three steps from nine to eight percent and modify the

calculation date, calculation period, and the term general state revenues. Should this constitutional amendment be:

Approved .....  
Rejected ..... "

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state."

Senator Parlette 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 Parlette and others on page 1, line 8 to Senate Joint Resolution No. 8221.

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

MOTION

On motion of Senator Parlette, the rules were suspended, Engrossed Senate Joint Resolution No. 8221 was advanced to third reading, the second reading considered the third and the resolution was placed on final passage.

Senator Parlette spoke in favor of passage of the resolution.

The President declared the question before the Senate to be the final passage of Engrossed Senate Joint Resolution No. 8221.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Joint Resolution No. 8221 and the resolution passed the Senate by the following vote: Yeas, 41; Nays, 7; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Litzow, McAuliffe, Morton, Murray, Padden, Parlette, Pflug, Prentice, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Conway, Keiser, Kline, Kohl-Welles, Nelson, Pridemore and Stevens

Excused: Senator Harper

ENGROSSED SENATE JOINT RESOLUTION NO. 8221, having received the constitutional majority, was declared passed.

MOTION

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

MESSAGE FROM THE HOUSE

March 3, 2012

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2233 and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Pridemore moved that the Senate recede from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2233.

Senator Pridemore spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Pridemore that the Senate recede from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2233.

The motion by Senator Pridemore carried and the Senate receded from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2233 by voice vote.

MOTION

On motion of Senator Pridemore, the rules were suspended and Engrossed Substitute House Bill No. 2233 was returned to second reading for the purposes of amendment.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2233, by House Committee on State Government & Tribal Affairs (originally sponsored by Representatives McCoy, Hunt, Haigh, Pedersen, Appleton, Morris, Billig, Fitzgibbon, Eddy, Sells, Tharinger, Jinkins, Hasegawa, Pollet, Wylie, Upthegrove and Roberts)

Creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country.

The measure was read the second time.

MOTION

Senator Pridemore moved that the following striking amendment by Senator Pridemore be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 37.12 RCW to read as follows:

(1) The process by which the state may retrocede to the United States all or part of the civil and/or criminal jurisdiction previously acquired by the state over a federally recognized Indian tribe, and the Indian country of such tribe, must be accomplished in accordance with the requirements of this section.

(2) To initiate civil and/or criminal retrocession the duly authorized governing body of a tribe must submit a retrocession resolution to the governor accompanied by information about the tribe's plan regarding the tribe's exercise of jurisdiction following the proposed retrocession. The resolution must express the desire of the tribe for the retrocession by the state of all or any measures or provisions of the civil and/or criminal jurisdiction acquired by the state under this chapter over the Indian country and the members of such Indian tribe. Before a tribe submits a retrocession resolution to the governor, the tribe and affected municipalities are encouraged to collaborate in the adoption of interlocal agreements, or other collaborative arrangements, with the goal of ensuring that the best interests of the tribe and the surrounding communities are served by the retrocession process.

(3) Upon receiving a resolution under this section, the governor must within ninety days convene a government-to-government meeting with either the governing body of the tribe or duly authorized tribal representatives for the purpose of considering the tribe's retrocession resolution. The governor's office must consult

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

with elected officials from the counties, cities, and towns proximately located to the area of the proposed retrocession.

(4) Within one year of the receipt of an Indian tribe's retrocession resolution the governor must issue a proclamation, if approving the request either in whole or in part. This one-year deadline may be extended by the mutual consent of the tribe and the governor, as needed. In addition, either the tribe or the governor may extend the deadline once for a period of up to six months. Within ten days of issuance of a proclamation approving the retrocession resolution, the governor must formally submit the proclamation to the federal government in accordance with the procedural requirements for federal approval of the proposed retrocession. In the event the governor denies all or part of the resolution, the reasons for such denial must be provided to the tribe in writing.

(5) Within one hundred twenty days of the governor's receipt of a tribe's resolution requesting civil and/or criminal retrocession, but prior to the governor's issuance of the proclamation approving or denying the tribe's resolution, the appropriate standing committees of the state house and senate may conduct public hearings on the tribe's request for state retrocession. The majority leader of the senate must designate the senate standing committee and the speaker of the house of representatives must designate the house standing committee. Following such public hearings, the designated legislative committees may submit advisory recommendations and/or comments to the governor regarding the proposed retrocession, but in no event are such legislative recommendations binding on the governor or otherwise of legal effect.

(6) The proclamation for retrocession does not become effective until it is approved by a duly designated officer of the United States government and in accordance with the procedures established by the United States for the approval of a proposed state retrocession.

(7) The provisions of RCW 37.12.010 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of this section.

(8) For any proclamation issued by the governor under this section that addresses the operation of motor vehicles upon the public streets, alleys, roads, and highways, the governor must consider the following:

(a) Whether the affected tribe has in place interlocal agreements with neighboring jurisdictions, including applicable state transportation agencies, that address uniformity of motor vehicle operations over Indian country;

(b) Whether there is a tribal traffic policing agency that will ensure the safe operation of motor vehicles in Indian country;

(c) Whether the affected tribe has traffic codes and courts in place; and

(d) Whether there are appropriate traffic control devices in place sufficient to maintain the safety of the public roadways.

(9) The following definitions apply for the purposes of this section:

(a) "Civil retrocession" means the state's act of returning to the federal government the civil jurisdiction acquired over Indians and Indian country under federal Public Law 280, Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

(b) "Criminal retrocession" means the state's act of returning to the federal government the criminal jurisdiction acquired over Indians and Indian country under federal Public Law 280, Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

(c) "Indian tribe" means any federally recognized Indian tribe, nation, community, band, or group;

(d) "Indian country" means:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities with the borders of the United States whether in the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

**NEW SECTION. Sec. 2.** A new section is added to chapter 37.12 RCW to read as follows:

A civil or criminal retrocession accomplished pursuant to the procedure set forth in section 1 of this act does not:

(1) Affect the state's civil jurisdiction over the civil commitment of sexually violent predators pursuant to chapter 71.09 RCW and the state must retain such jurisdiction notwithstanding the completion of the retrocession process authorized under section 1 of this act; and

(2) Abate any action or proceeding which has been filed with any court or agency of the state or local government preceding the effective date of the completion of a retrocession authorized under section 1 of this act.

**NEW SECTION. Sec. 3.** A new section is added to chapter 37.12 RCW to read as follows:

(1) The provisions of section 1 of this act do not affect the validity of any retrocession procedure commenced under RCW 37.12.100 through 37.12.140 prior to the effective date of this section.

(2) Any Indian tribe that has commenced but not completed the retrocession procedure authorized in RCW 37.12.100 through 37.12.140 may request retrocession under section 1 of this act in lieu of completing that procedure.

(3) Any Indian tribe that has completed the retrocession procedure authorized in RCW 37.12.100 through 37.12.140 may use the process authorized under section 1 of this act to request retrocession of any civil or criminal jurisdiction retained by the state under RCW 37.12.120 or 37.12.010.

(4) The provisions of RCW 37.12.120 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of section 1 of this act."

Senator Pridemore 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 Pridemore to Engrossed Substitute House Bill No. 2233.

The motion by Senator Pridemore 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 3 of the title, after "country;" strike the remainder of the title and insert "and adding new sections to chapter 37.12 RCW."

MOTION

On motion of Senator Pridemore, the rules were suspended, Engrossed Substitute House Bill No. 2233 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 Pridemore and Sheldon 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. 2233 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2233 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 42; Nays, 6; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Ericksen, Hewitt, Holmquist Newbry, Honeyford, Padden and Stevens

Excused: Senator Harper

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2233 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.

#### MESSAGE FROM THE HOUSE

March 3, 2012

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2361 and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Hobbs moved that the Senate recede from its position on Engrossed Substitute House Bill No. 2361 and consider the bill without the Senate amendment(s).

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

The President declared the question before the Senate to be motion by Senator Hobbs that the Senate recede from its position on Engrossed Substitute House Bill No. 2361 and consider the bill without Senate amendment(s).

The motion by Senator Hobbs carried and the Senate receded from its position on Engrossed Substitute House Bill No. 2361 and considered the bill without the Senate amendment(s) by voice vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2361 without the Senate amendment(s).

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2361, without the Senate amendment(s), and the bill passed the Senate by the following vote: Yeas, 36; Nays, 12; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Conway, Delvin, Eide, Ericksen, Fain, Frockt, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Keiser, Kilmer, King, Kline,

Kohl-Welles, Litzow, Nelson, Padden, Parlette, Pflug, Pridemore, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Chase, Fraser, Hargrove, Haugen, Holmquist Newbry, Kastama, McAuliffe, Morton, Murray, Prentice, Ranker and Regala

Excused: Senator Harper

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2361, 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, 2012

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to SUBSTITUTE HOUSE BILL NO. 2640 and asks the Senate to recede therefrom.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Hobbs moved that the Senate recede from its position on Engrossed Substitute 2640 and consider the bill without the Senate amendment(s).

Senator Hobbs spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Hobbs that the Senate recede from its position on Engrossed Substitute 2640 and consider the bill without Senate amendment(s).

The motion by Senator Hobbs carried and the Senate receded from its position on Substitute House Bill No. 2640 and consider the bill without the Senate amendment(s) by voice vote.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2640 without the Senate amendment(s).

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2640, without the Senate amendment(s), and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Harper

SUBSTITUTE HOUSE BILL NO. 2640, 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, 2012

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

MR. PRESIDENT:

The House refuses to concur in the Senate amendment(s) to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2614 and asks the Senate to recede therefrom. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hobbs moved that the Senate recede from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2614.

The President declared the question before the Senate to be motion by Senator Hobbs that the Senate recede from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2614.

The motion by Senator Hobbs carried and the Senate receded from its position in the Senate amendment(s) to Engrossed Substitute House Bill No. 2614 by voice vote.

MOTION

On motion of Senator Hobbs, the rules were suspended and Engrossed Substitute House Bill No. 2614 was returned to second reading for the purposes of amendment.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2614, by House Committee on Judiciary (originally sponsored by Representatives Kenney, Ryu, Hasegawa and Santos)

Limiting deficiency judgments pertaining to residual debts following short sales of owner-occupied residential property secured by deeds of trust. Revised for 1st Substitute: Limiting deficiency judgments pertaining to residual debts following short sales of owner-occupied residential property secured by deeds of trust. (REVISED FOR PASSED LEGISLATURE: Assisting homeowners in crisis by providing alternatives, remedies, and assistance.)

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 64.04 RCW to read as follows:

(1) If the beneficiary or mortgagee, or its assignees, of debt secured by owner-occupied real property intends to release its deed of trust or mortgage in the real property for less than full payment of the secured debt, it shall provide upon its first written notice to the borrower the following information in substantially the following form:

"To: [Name of borrower]                      DATE:

Please take note that [name of beneficiary or mortgagee, or its assignees], in releasing its security interest in this owner-occupied real property, [waives or reserves] the right to collect that amount that constitutes full payment of the secured debt. The amount of debt outstanding as of the date of this letter is \$. . . . . However,

nothing in this letter precludes the borrower from negotiating with the [name of beneficiary or mortgagee, or its assignees] for a full release of this outstanding debt.

If [name of beneficiary or mortgagee, or its assignees] does not initiate a court action to collect the outstanding debt within three years on the date which it released its security interest, the right to collect the outstanding debt is forfeited."

(2) If the beneficiary or mortgagee, or its assignees, of debt secured by owner-occupied real property intends to pursue collection of the outstanding debt, it must initiate a court action to collect the remaining debt within three years from the date on which it released its deed of trust or mortgage in the owner-occupied real property or else it forfeits any right to collect the remaining debt.

(3) This section applies only to debts incurred by individuals primarily for personal, family, or household purposes. This section does not apply to debts for business, commercial, or agricultural purposes.

(4) For the purposes of this section, "owner-occupied real property" means real property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower.

**Sec. 2.** RCW 18.86.120 and 1997 c 217 s 7 are each amended to read as follows:

(1) The pamphlet required under RCW 18.86.030(1)(f) shall consist of the entire text of RCW 18.86.010 through 18.86.030 and 18.86.040 through 18.86.110 with a separate cover page. The pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in print no smaller than 10-point type, the cover page shall be in print no smaller than 12- point type, and the title of the cover page "The Law of Real Estate Agency" shall be in print no smaller than 18-point type. The cover page shall be in the following form:

**The Law of Real Estate Agency**

This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.

The following is only a brief summary of the attached law:

Sec. 1. Definitions. Defines the specific terms used in the law.

Sec. 2. Relationships between Licensees and the Public. States that a licensee who works with a buyer or tenant represents that buyer or tenant--unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client--unless the parties agree in writing that both licensees are dual agents.

Sec. 3. Duties of a Licensee Generally. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

Sec. 4. Duties of a Seller's Agent. Prescribes the additional duties of a licensee representing the seller or landlord only.

Sec. 5. Duties of a Buyer's Agent. Prescribes the additional duties of a licensee representing the buyer or tenant only.

Sec. 6. Duties of a Dual Agent. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

Sec. 7. Duration of Agency Relationship. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

Sec. 8. Compensation. Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

Sec. 9. Vicarious Liability. Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

Sec. 10. Imputed Knowledge and Notice. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Sec. 11. Interpretation. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

(2)(a) The pamphlet required under RCW 18.86.030(1)(f) must also include the following disclosure: When the seller of owner-occupied residential real property enters into a listing agreement with a real estate licensee where the proceeds from the sale may be insufficient to cover the costs at closing, it is the responsibility of the real estate licensee to disclose to the seller in writing that the decision by any beneficiary or mortgagee, or its assignees, to release its interest in the real property, for less than the amount the borrower owes, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including fees such as the real estate licensee's commission.

(b) For the purposes of this subsection, "owner-occupied real property" means real property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower.

**Sec. 3.** RCW 4.16.040 and 2007 c 124 s 1 are each amended to read as follows:

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement, except as provided for in section 1(2) of this act.

(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate.

**Sec. 4.** RCW 61.24.031 and 2011 c 58 s 5 are each amended to read as follows:

(1)(a) A trustee, beneficiary, or authorized agent may not issue a notice of default under RCW 61.24.030(8) until: (i) Thirty days after ~~((initial contact with the borrower was initiated as required under (b) of this subsection or thirty days after))~~ satisfying the due diligence requirements as described in subsection (5) of this section

and the borrower has not responded; or (ii) if the borrower responds to the initial contact, ninety days after the initial contact with the borrower was initiated.

(b) A beneficiary or authorized agent shall make initial contact with the borrower by letter to provide the borrower with information required under (c) of this subsection and by telephone as required under subsection (5) of this section. The letter required under this subsection must be mailed in accordance with subsection (5)(a) of this section and must include the information described in (c) of this subsection and subsection (5)(e)(i) through (iv) of this section.

(c) The letter required under this subsection, developed by the department pursuant to RCW 61.24.033, at a minimum shall include:

(i) A paragraph printed in no less than twelve-point font and bolded that reads:

"You must respond within thirty days of the date of this letter. IF YOU DO NOT RESPOND within thirty days, a notice of default may be issued and you may lose your home in foreclosure.

IF YOU DO RESPOND within thirty days of the date of this letter, you will have an additional sixty days to meet with your lender before a notice of default may be issued.

You should contact a housing counselor or attorney as soon as possible. Failure to contact a housing counselor or attorney may result in your losing certain opportunities, such as meeting with your lender or participating in mediation in front of a neutral third party. A housing counselor or attorney can help you work with your lender to avoid foreclosure.

If you filed bankruptcy or have been discharged in bankruptcy, this communication is not intended as an attempt to collect a debt from you personally, but is notice of enforcement of the deed of trust lien against the property. If you wish to avoid foreclosure and keep your property, this notice sets forth your rights and options.;"

(ii) The toll-free telephone number from the United States department of housing and urban development to find a department-approved housing counseling agency, the toll-free numbers for the statewide foreclosure hotline recommended by the housing finance commission, and the statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys;

(iii) A paragraph stating that a housing counselor may be available at little or no cost to the borrower and that whether or not the borrower contacts a housing counselor or attorney, the borrower has the right to request a meeting with the beneficiary; and

(iv) A paragraph explaining how the borrower may respond to the letter and stating that after responding the borrower will have an opportunity to meet with his or her beneficiary in an attempt to resolve and try to work out an alternative to the foreclosure and that, after ninety days from the date of the letter, a notice of default may be issued, which starts the foreclosure process.

(d) If the beneficiary has exercised due diligence as required under subsection (5) of this section and the borrower does not respond by contacting the beneficiary within thirty days of the initial contact, the notice of default may be issued. "Initial contact" with the borrower is considered made three days after the date the letter required in (b) of this subsection is sent.

(e) If a meeting is requested by the borrower or the borrower's housing counselor or attorney, the beneficiary or authorized agent shall schedule the meeting to occur before the notice of default is issued. An assessment of the borrower's financial ability to modify or restructure the loan obligation and a discussion of options must occur during the meeting scheduled for that purpose.

(f) The meeting scheduled to assess the borrower's financial ability to modify or restructure the loan obligation and discuss options to avoid foreclosure ~~((must be in person, unless the requirement to meet in person is waived in writing by the borrower or the borrower's representative. A person who is authorized to modify the loan obligation or reach an alternative resolution to~~

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

~~foreclosure on behalf of the beneficiary may participate by telephone or video conference, so long as a representative of the beneficiary is at the meeting in person)) may be held telephonically, unless the borrower or borrower's representative requests in writing that a meeting be held in person. The written request for an in-person meeting must be made within thirty days of the initial contact with the borrower. If the meeting is requested to be held in person, the meeting must be held in the county where the borrower resides. A person who is authorized to agree to a resolution, including modifying or restructuring the loan obligation or other alternative resolution to foreclosure on behalf of the beneficiary, must be present either in person or on the telephone or video conference during the meeting.~~

(2) A notice of default issued under RCW 61.24.030(8) must include a declaration, as provided in subsection (9) of this section, from the beneficiary or authorized agent that it has contacted the borrower as provided in subsection (1) of this section, it has tried with due diligence to contact the borrower under subsection (5) of this section, or the borrower has surrendered the property to the trustee, beneficiary, or authorized agent. Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the declaration as evidence that the requirements of this section have been satisfied, and the trustee is not liable for the beneficiary's or its authorized agent's failure to comply with the requirements of this section.

(3) If, after the initial contact under subsection (1) of this section, a borrower has designated a housing counseling agency, housing counselor, or attorney to discuss with the beneficiary or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure, the borrower shall inform the beneficiary or authorized agent and provide the contact information to the beneficiary or authorized agent. The beneficiary or authorized agent shall contact the designated representative for the borrower to meet.

(4) The beneficiary or authorized agent and the borrower or the borrower's representative shall attempt to reach a resolution for the borrower within the ninety days from the time the initial contact is sent and the notice of default is issued. A resolution may include, but is not limited to, a loan modification, an agreement to conduct a short sale, or a deed in lieu of foreclosure transaction, or some other workout plan. Any modification or workout plan offered at the meeting with the borrower's designated representative by the beneficiary or authorized agent is subject to approval by the borrower.

(5) A notice of default may be issued under RCW 61.24.030(8) if a beneficiary or authorized agent has initiated contact with the borrower as required under subsection (1)(b) of this section and the failure to meet with the borrower occurred despite the due diligence of the beneficiary or authorized agent. Due diligence requires the following:

(a) A beneficiary or authorized agent shall first attempt to contact a borrower by sending a first-class letter to the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must be the letter described in subsection (1)(c) of this section.

(b)(i) After the letter has been sent, the beneficiary or authorized agent shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls must be made to the primary and secondary telephone numbers on file with the beneficiary or authorized agent.

(ii) A beneficiary or authorized agent may attempt to contact a borrower using an automated system to dial borrowers if the telephone call, when answered, is connected to a live representative of the beneficiary or authorized agent.

(iii) A beneficiary or authorized agent satisfies the telephone contact requirements of this subsection (5)(b) if the beneficiary or authorized agent determines, after attempting contact under this subsection (5)(b), that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected or are not good contact numbers for the borrower.

(iv) The telephonic contact under this subsection (5)(b) does not constitute the meeting under subsection (1)(f) of this section.

(c) If the borrower does not respond within fourteen days after the telephone call requirements of (b) of this subsection have been satisfied, the beneficiary or authorized agent shall send a certified letter, with return receipt requested, to the borrower at the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must include the information described in (e)(i) through (iv) of this subsection. The letter must also include a paragraph stating: "Your failure to contact a housing counselor or attorney may result in your losing certain opportunities, such as meeting with your lender or participating in mediation in front of a neutral third party."

(d) The beneficiary or authorized agent shall provide a means for the borrower to contact the beneficiary or authorized agent in a timely manner, including a toll-free telephone number or charge-free equivalent that will provide access to a live representative during business hours for the purpose of initiating and scheduling the meeting under subsection (1)(f) of this section.

(e) The beneficiary or authorized agent shall post a link on the home page of the beneficiary's or authorized agent's internet web site, if any, to the following information:

(i) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options;

(ii) A list of financial documents borrowers should collect and be prepared to present to the beneficiary or authorized agent when discussing options for avoiding foreclosure;

(iii) A toll-free telephone number or charge-free equivalent for borrowers who wish to discuss options for avoiding foreclosure with their beneficiary or authorized agent; and

(iv) The toll-free telephone number or charge-free equivalent made available by the department to find a department-approved housing counseling agency.

(6) Subsections (1) and (5) of this section do not apply if ~~(any of the following occurs:~~

~~(a)) the borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the trustee, beneficiary, or authorized agent((=or~~

~~(b) The borrower has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing enforcement of the deed of trust)).~~

(7)(a) This section applies only to deeds of trust that are recorded against owner-occupied residential real property. This section does not apply to deeds of trust: (i) Securing a commercial loan; (ii) securing obligations of a grantor who is not the borrower or a guarantor; or (iii) securing a purchaser's obligations under a seller-financed sale.

(b) This section does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

(8) As used in this section:

(a) "Department" means the United States department of housing and urban development.

(b) "Seller-financed sale" means a residential real property transaction where the seller finances all or part of the purchase price,

and that financed amount is secured by a deed of trust against the subject residential real property.

(9) The form of declaration to be provided by the beneficiary or authorized agent as required under subsection (2) of this section must be in substantially the following form:

"FORECLOSURE LOSS MITIGATION FORM

Please select applicable option(s) below.

The undersigned beneficiary or authorized agent for the beneficiary hereby represents and declares under the penalty of perjury that [check the applicable box and fill in any blanks so that the trustee can insert, on the beneficiary's behalf, the applicable declaration in the notice of default required under chapter 61.24 RCW]:

(1) [ ] The beneficiary or beneficiary's authorized agent has contacted the borrower under, and has complied with, RCW 61.24.031 (contact provision to "assess the borrower's financial ability to pay the debt secured by the deed of trust and explore options for the borrower to avoid foreclosure") and the borrower did not request a meeting.

(2) [ ] The beneficiary or beneficiary's authorized agent has contacted the borrower as required under RCW 61.24.031 and the borrower or the borrower's designated representative requested a meeting. A meeting was held in compliance with RCW 61.24.031.

(3) [ ] The beneficiary or beneficiary's authorized agent has exercised due diligence to contact the borrower as required in RCW 61.24.031(5).

(4) [ ] The borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or to the trustee.

((5) [ ] Under RCW 61.24.031, the beneficiary or the beneficiary's authorized agent has verified information that, on or before the date of this declaration, the borrower(s) has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing the enforcement of the deed of trust.))"

**Sec. 5.** RCW 61.24.160 and 2011 c 58 s 6 are each amended to read as follows:

(1)(a) A housing counselor who is contacted by a borrower under RCW 61.24.031 has a duty to act in good faith to attempt to reach a resolution with the beneficiary on behalf of the borrower within the ninety days provided from the date the beneficiary initiates contact with the borrower and the date the notice of default is issued. A resolution may include, but is not limited to, modification of the loan, an agreement to conduct a short sale, a deed in lieu of foreclosure transaction, or some other workout plan.

(b) Nothing in RCW 61.24.031 or this section precludes a meeting or negotiations between the housing counselor, borrower, and beneficiary at any time, including after the issuance of the notice of default.

(c) A borrower who is contacted under RCW 61.24.031 may seek the assistance of a housing counselor or attorney at any time.

(2) Housing counselors have a duty to act in good faith to assist borrowers by:

(a) Preparing the borrower for meetings with the beneficiary;

(b) Advising the borrower about what documents the borrower must have to seek a loan modification or other resolution;

(c) Informing the borrower about the alternatives to foreclosure, including loan modifications or other possible resolutions; and

(d) Providing other guidance, advice, and education as the housing counselor considers necessary.

(3) A housing counselor or attorney assisting a borrower may refer the borrower to ((a)) mediation ((~~program~~)), pursuant to RCW 61.24.163, if((:

~~(a))~~ the housing counselor or attorney determines that mediation is appropriate based on the individual circumstances(~~;~~ and

~~(b) A notice of sale on the deed of trust has not been recorded.~~

~~(4))~~ and the borrower has received a notice of default. The referral to mediation may be made any time after a notice of default has been issued but no later than twenty days after the date a notice of sale has been recorded.

(4) For borrowers who have received a letter under RCW 61.24.031 before the effective date of this section, a referral to mediation by a housing counselor or attorney does not preclude a trustee issuing a notice of default if the requirements of RCW 61.24.031 have been met.

(5) Housing counselors providing assistance to borrowers under RCW 61.24.031 are not liable for civil damages resulting from any acts or omissions in providing assistance, unless the acts or omissions constitute gross negligence or willful or wanton misconduct.

(6) Housing counselors shall provide information to the department to assist the department in its annual report to the legislature as required under RCW 61.24.163((~~45~~)) (18). The information provided to the department by the housing counselors should include outcomes of foreclosures and be similar to the information requested in the national foreclosure mortgage counseling client level foreclosure outcomes report form.

**Sec. 6.** RCW 61.24.163 and 2011 2nd sp.s. c 4 s 1 are each amended to read as follows:

(1) The foreclosure mediation program established in this section applies only to borrowers who have been referred to mediation by a housing counselor or attorney. The referral to mediation may be made any time after a notice of default has been issued but no later than twenty days after the date a notice of sale has been recorded. The mediation program under this section is not governed by chapter 7.07 RCW and does not preclude mediation required by a court or other provision of law.

(2) A housing counselor or attorney referring a borrower to mediation shall send a notice to the borrower and the department, stating that mediation is appropriate.

(3) Within ten days of receiving the notice, the department shall:

(a) Send a notice to the beneficiary, the borrower, the housing counselor or attorney who referred the borrower, and the trustee stating that the parties have been referred to mediation. The notice must include the statements and list of documents and information described in subsections (4) and (5)((~~b~~)(~~i~~) through (~~iv~~)) of this section and a statement explaining each party's responsibility to pay the mediator's fee; and

(b) Select a mediator and notify the parties of the selection.

(4) Within ((~~forty five~~)) twenty-three days of the department's notice that the parties have been referred to mediation, the borrower shall transmit the documents required for mediation to the mediator and the beneficiary. The required documents include an initial Making Home Affordable Application (HAMP) package or such other equivalent homeowner financial information worksheet as required by the department. In the event the department is required to create a worksheet, the worksheet must include, at a minimum, the following information:

(a) The borrower's current and future income;

(b) Debts and obligations;

(c) Assets;

(d) Expenses;

(e) Tax returns for the previous two years;

(f) Hardship information;

(g) Other applicable information commonly required by any

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

applicable federal mortgage relief program.

(5) Within twenty days of the beneficiary's receipt of the borrower's documents, the beneficiary shall transmit the documents required for mediation to the mediator and the borrower. The required documents include:

(a) An accurate statement containing the balance of the loan within thirty days of the date on which the beneficiary's documents are due to the parties;

(b) Copies of the note and deed of trust;

(c) Proof that the entity claiming to be the beneficiary is the owner of any promissory note or obligation secured by the deed of trust. Sufficient proof may be a copy of the declaration described in RCW 61.24.030(7)(a);

(d) The best estimate of any arrearage and an itemized statement of the arrearages;

(e) An itemized list of the best estimate of fees and charges outstanding;

(f) The payment history and schedule for the preceding twelve months, or since default, whichever is longer, including a breakdown of all fees and charges claimed;

(g) All borrower-related and mortgage-related input data used in any net present values analysis. If no net present values analysis is required by the applicable federal mortgage relief program, then the input data required under the federal deposit insurance corporation and published in the federal deposit insurance corporation loan modification program guide, or if that calculation becomes unavailable, substantially similar input data as determined by the department;

(h) An explanation regarding any denial for a loan modification, forbearance, or other alternative to foreclosure in sufficient detail for a reasonable person to understand why the decision was made;

(i) Appraisal or other broker price opinion most recently relied upon by the beneficiary not more than ninety days old at the time of the scheduled mediation; and

(j) The portion or excerpt of the pooling and servicing agreement that prohibits the beneficiary from implementing a modification, if the beneficiary claims it cannot implement a modification due solely to limitations in a pooling and servicing agreement, and documentation or a statement detailing the efforts of the beneficiary to obtain a waiver of the pooling and servicing agreement provisions.

(6) Within seventy days of receiving the referral from the department, the mediator shall convene a mediation session in the county where the borrower resides, unless the parties agree on another location. The parties may agree (~~in writing~~) to extend the time in which to schedule the mediation session. If the parties agree to extend the time, the beneficiary shall notify the trustee of the extension and the date the mediator is expected to issue the mediator's certification.

~~((5))~~ (7)(a) The mediator may schedule phone conferences, consultations with the parties individually, and other communications to ensure that the parties have all the necessary information and documents to engage in a productive mediation.

(b) The mediator must send written notice of the time, date, and location of the mediation session to the borrower, the beneficiary, and the department at least (~~fifteen~~) thirty days prior to the mediation session. At a minimum, the notice must contain:

(i) A statement that the borrower may be represented in the mediation session by an attorney or other advocate;

(ii) A statement that a person with authority to agree to a resolution, including a proposed settlement, loan modification, or dismissal or continuation of the foreclosure proceeding, must be present either in person or on the telephone or video conference during the mediation session; and

(iii) ~~((A complete list of documents and information required by this section that the parties must provide to the mediator and the deadlines for providing the documents and information; and~~

(iv)) A statement that the parties have a duty to mediate in good faith and that failure to mediate in good faith may impair the beneficiary's ability to foreclose on the property or the borrower's ability to modify the loan or take advantage of other alternatives to foreclosure.

~~((6))~~ (8)(a) The borrower, the beneficiary or authorized agent, and the mediator must meet in person for the mediation session. However, a person with authority to agree to a resolution on behalf of the beneficiary may be present over the telephone or video conference during the mediation session.

~~((7))~~ (b) After the mediation session commences, the mediator may continue the mediation session once, and any further continuances must be with the consent of the parties.

(9) The participants in mediation must address the issues of foreclosure that may enable the borrower and the beneficiary to reach a resolution, including but not limited to reinstatement, modification of the loan, restructuring of the debt, or some other workout plan. To assist the parties in addressing issues of foreclosure, the mediator (~~must~~) may require the participants to consider the following:

(a) The borrower's current and future economic circumstances, including the borrower's current and future income, debts, and obligations for the previous sixty days or greater time period as determined by the mediator;

(b) The net present value of receiving payments pursuant to a modified mortgage loan as compared to the anticipated net recovery following foreclosure;

(c) Any affordable loan modification calculation and net present value calculation when required under any federal mortgage relief program, including the home affordable modification program (HAMP) as applicable to government-sponsored enterprise and nongovernment-sponsored enterprise loans and any HAMP-related modification program applicable to loans insured by the federal housing administration, the veterans administration, and the rural housing service. If such a calculation is not provided or required, then the beneficiary must (~~use the current calculations, assumptions, and forms that are~~) provide the net present value data inputs established by the federal deposit insurance corporation and published in the federal deposit insurance corporation loan modification program guide or other net present value data inputs as designated by the department. The mediator may run the calculation in order for a productive mediation to occur and to comply with the mediator certification requirement; and

(d) Any other loss mitigation guidelines to loans insured by the federal housing administration, the veterans administration, and the rural housing service, if applicable.

~~((8))~~ (10) A violation of the duty to mediate in good faith as required under this section may include:

(a) Failure to timely participate in mediation without good cause;

(b) Failure of the borrower or the beneficiary to provide the (~~following~~) documentation to the borrower and mediator at least ten days before the mediation or pursuant to the mediator's instructions:

(i) An accurate statement containing the balance of the loan as of the first day of the month in which the mediation occurs;

(ii) Copies of the note and deed of trust;

(iii) Proof that the entity claiming to be the beneficiary is the owner of any promissory note or obligation secured by the deed of trust. Sufficient proof may be a copy of the declaration described in RCW 61.24.030(7)(a);

(iv) The best estimate of any arrearage and an itemized statement of the arrearages;

(v) An itemized list of the best estimate of fees and charges outstanding;

(vi) The payment history and schedule for the preceding twelve months, or since default, whichever is longer, including a breakdown of all fees and charges claimed;

(vii) All borrower-related and mortgage-related input data used in any net present value analysis;

(viii) An explanation regarding any denial for a loan modification, forbearance, or other alternative to foreclosure in sufficient detail for a reasonable person to understand why the decision was made;

(ix) The most recently available appraisal or other broker price opinion most recently relied upon by the beneficiary; and

(x) The portion or excerpt of the pooling and servicing agreement that prohibits the beneficiary from implementing a modification, if the beneficiary claims it cannot implement a modification due solely to limitations in a pooling and servicing agreement, and documentation or a statement detailing the efforts of the beneficiary to obtain a waiver of the pooling and servicing agreement provisions;

(c) Failure of the borrower to provide documentation to the beneficiary and mediator, at least ten days before the mediation or pursuant to the mediator's instruction, showing the borrower's current and future income, debts and obligations, and tax returns for the past two years;

(d) Failure of either party to pay the respective portion of the mediation fee in advance of the mediation as required under this section;

(e)) documentation required before mediation or pursuant to the mediator's instructions;

(c) Failure of a party to designate representatives with adequate authority to fully settle, compromise, or otherwise reach resolution with the borrower in mediation; and

((#)) (d) A request by a beneficiary that the borrower waive future claims he or she may have in connection with the deed of trust, as a condition of agreeing to a modification, except for rescission claims under the federal truth in lending act. Nothing in this section precludes a beneficiary from requesting that a borrower dismiss with prejudice any pending claims against the beneficiary, its agents, loan servicer, or trustee, arising from the underlying deed of trust, as a condition of modification.

((9)) (11) If the mediator reasonably believes a borrower will not attend a mediation session based on the borrower's conduct, such as the lack of response to the mediator's communications, the mediator may cancel a scheduled mediation session and send a written cancellation to the department and the trustee and send copies to the parties. The beneficiary may proceed with the foreclosure after receipt of the mediator's written confirmation of cancellation.

(12) Within seven business days after the conclusion of the mediation session, the mediator must send a written certification to the department and the trustee and send copies to the parties of:

(a) The date, time, and location of the mediation session;

(b) The names of all persons attending in person and by telephone or video conference, at the mediation session;

(c) Whether a resolution was reached by the parties, including whether the default was cured by reinstatement, modification, or restructuring of the debt, or some other alternative to foreclosure was agreed upon by the parties;

(d) Whether the parties participated in the mediation in good faith; and

(e) If a written agreement was not reached, a description of ((the)) any net present value test used, along with a copy of the inputs, including the result of ((the)) any net present value test expressed in a dollar amount.

((10)) (13) If the parties are unable to reach ((any agreement and the mediator certifies that the parties acted in good faith, the beneficiary may proceed with the foreclosure.

(11)) an agreement, the beneficiary may proceed with the foreclosure after receipt of the mediator's written certification.

(14)(a) The mediator's certification that the beneficiary failed to act in good faith in mediation constitutes a defense to the nonjudicial foreclosure action that was the basis for initiating the mediation. In any action to enjoin the foreclosure, the beneficiary ((shall be)) is entitled to rebut the allegation that it failed to act in good faith.

(b) The mediator's certification that the beneficiary failed to act in good faith during mediation does not constitute a defense to a judicial foreclosure or a future nonjudicial foreclosure action if a modification of the loan is agreed upon and the borrower subsequently defaults.

(c) If an affordable loan modification is not offered in the mediation or a written agreement was not reached and the mediator's certification shows that the net present value of the modified loan exceeds the anticipated net recovery at foreclosure, that showing in the certification ((shall)) constitutes a basis for the borrower to enjoin the foreclosure.

((12)) (15) The mediator's certification that the borrower failed to act in good faith in mediation authorizes the beneficiary to proceed with the foreclosure.

((13)) (16)(a) If a borrower has been referred to mediation before a notice of trustee sale has been recorded, a trustee may not record the notice of sale until the trustee receives the mediator's certification stating that the mediation has been completed. ((#)) If the trustee does not receive the mediator's certification, the trustee may record the notice of sale after ten days from the date the certification to the trustee was due. If ((the), after a notice of sale is recorded under this subsection ((13)(b) and)) (16)(a), the mediator subsequently issues a certification ((alleging)) finding that the beneficiary violated the duty of good faith, ((the trustee may not proceed with the sale.

(14)) the certification constitutes a basis for the borrower to enjoin the foreclosure.

(b) If a borrower has been referred to mediation after the notice of sale was recorded, the sale may not occur until the trustee receives the mediator's certification stating that the mediation has been completed.

(17) A mediator may charge reasonable fees as authorized by this subsection and by the department. Unless the fee is waived or the parties agree otherwise, a foreclosure mediator's fee may not exceed four hundred dollars for preparing, scheduling, and conducting a mediation session lasting between one hour and three hours. For a mediation session exceeding three hours, the foreclosure mediator may charge a reasonable fee, as authorized by the department. The mediator must provide an estimated fee before the mediation, and payment of the mediator's fee must be divided equally between the beneficiary and the borrower. The beneficiary and the borrower must tender the loan mediator's fee ((seven)) within thirty calendar days ((before the commencement of the)) from receipt of the department's letter referring the parties to mediation or pursuant to the mediator's instructions.

((15)) (18) Beginning December 1, 2012, and every year thereafter, the department shall report annually to the legislature on:

(a) The performance of the program, including the numbers of borrowers who are referred to mediation by a housing counselor or attorney;

(b) The results of the mediation program, including the number of mediations requested by housing counselors and attorneys, the number of certifications of good faith issued, the number of borrowers and beneficiaries who failed to mediate in good faith, and the reasons for the failure to mediate in good faith, if known, the numbers of loans restructured or modified, the change in the

FIFTY SEVENTH DAY, MARCH 5, 2012

borrower's monthly payment for principal and interest and the number of principal write-downs and interest rate reductions, and, to the extent practical, the number of borrowers who report a default within a year of restructuring or modification;

(c) The information received by housing counselors regarding outcomes of foreclosures; and

(d) Any recommendations for changes to the statutes regarding the mediation program.

**Sec. 7.** RCW 61.24.169 and 2011 2nd sp.s. c 4 s 2 are each amended to read as follows:

(1) For the purposes of RCW 61.24.163, the department must maintain a list of approved foreclosure mediators. The department may approve the following persons to serve as foreclosure mediators under this section if the person has completed ten mediations and either a forty-hour mediation course and sixty hours of mediating or has two hundred hours experience mediating:

(a) Attorneys who are active members of the Washington state bar association;

(b) Employees of United States department of housing and urban development-approved housing counseling agencies or approved by the Washington state housing finance commission;

(c) Employees or volunteers of dispute resolution centers under chapter 7.75 RCW; ~~(and)~~

(d) Retired judges of Washington courts; and

(e) Other experienced mediators.

(2) The department may establish a required training program for foreclosure mediators and may require mediators to acquire training before being approved. The mediators must be familiar with relevant aspects of the law, have knowledge of community-based resources and mortgage assistance programs, and refer borrowers to these programs where appropriate.

(3) The department may remove any mediator from the approved list of mediators.

(4)(a) A mediator under this section ~~((who is an employee or volunteer of a dispute resolution center under chapter 7.75 RCW))~~ is immune from suit in any civil action based on any proceedings or other official acts performed in his or her capacity as a foreclosure mediator, except in cases of willful or wanton misconduct.

(b) A mediator is not subject to discovery or compulsory process to testify in any litigation pertaining to a foreclosure action between the parties. However, the mediator's certification and all information and material presented as part of the mediation process may be deemed admissible evidence, subject to court rules, in any litigation pertaining to a foreclosure action between the parties.

**Sec. 8.** RCW 61.24.174 and 2011 1st sp.s. c 24 s 1 are each amended to read as follows:

(1) Except as provided in subsection ~~((4))~~ (5) of this section, beginning October 1, 2011, and every quarter thereafter, every beneficiary issuing notices of default, or directing that a trustee or authorized agent issue the notice of default, on owner-occupied residential real property under this chapter must:

(a) Report to the department the number of owner-occupied residential real properties for which the beneficiary has issued a notice of default during the previous quarter; ~~(and)~~

(b) Remit the amount required under subsection (2) of this section; and

(c) Report and update beneficiary contact information for the person and work group responsible for the beneficiary's compliance with the requirements of the foreclosure fairness act created in this chapter.

(2) For each owner-occupied residential real property for which a notice of default has been issued, the beneficiary issuing the notice of default, or directing that a trustee or authorized agent issue the notice of default, shall remit two hundred fifty dollars to the department to be deposited, as provided under RCW 61.24.172, into

2012 REGULAR SESSION

the foreclosure fairness account. The two hundred fifty dollar payment is required per property and not per notice of default. The beneficiary shall remit the total amount required in a lump sum each quarter.

(3) Reporting and payments under subsections (1) and (2) of this section are due within forty-five days of the end of each quarter.

(4) No later than thirty days after April 14, 2011, the beneficiaries required to report and remit to the department under this section shall determine the number of owner-occupied residential real properties for which notices of default were issued during the three months prior to April 14, 2011. The beneficiary shall remit to the department a one-time sum of two hundred fifty dollars multiplied by the number of properties. In addition, by July 31, 2011, the beneficiaries required to report and remit to the department under this section shall remit to the department another one-time sum of two hundred fifty dollars multiplied by the number of owner-occupied residential real properties for which notices of default were issued from April 14, 2011, through June 30, 2011. The department shall deposit the funds into the foreclosure fairness account as provided under RCW 61.24.172.

~~((4))~~ (5) This section does not apply to any beneficiary or loan servicer that is a federally insured depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of perjury that it has issued, or has directed a trustee or authorized agent to issue, fewer than two hundred fifty notices of default in the preceding year.

~~((5))~~ (6) This section does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

**Sec. 9.** RCW 61.24.030 and 2011 c 58 s 4 are each amended to read as follows:

It shall be requisite to a trustee's sale:

(1) That the deed of trust contains a power of sale;

(2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;

(3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;

(4) That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;

(5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated;

(6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address;

(7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note

or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

(b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

(c) This subsection (7) does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW;

(8) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first-class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) A statement identifying each county in which the deed of trust is recorded and the document number given to the deed of trust upon recording by each county auditor or recording officer;

(c) A statement that the beneficiary has declared the borrower or grantor to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs, or fees that the borrower, grantor, or any guarantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) A statement showing the total of (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) A statement that failure to cure the alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal, and publication of a notice of sale, and that the property described in (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future, or no less than one hundred fifty days in the future if the borrower received a letter under RCW 61.24.031;

(h) A statement that the effect of the recordation, transmittal, and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) A statement that the effect of the sale of the grantor's property by the trustee will be to deprive the grantor of all their interest in the property described in (a) of this subsection;

(j) A statement that the borrower, grantor, and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground;

(k) In the event the property secured by the deed of trust is owner-occupied residential real property, a statement, prominently set out at the beginning of the notice, which shall state as follows:

("You should take care to protect your interest in your home. This notice of default (your failure to pay) is the first step in a process that could result in you losing your home. You should carefully review your options. For example:

- Can you pay and stop the foreclosure process?
- Do you dispute the failure to pay?
- Can you sell your property to preserve your equity?
- Are you able to refinance this loan or obligation with a new loan or obligation from another lender with payments, terms, and fees

that are more affordable?

Do you qualify for any government or private homeowner assistance programs?

Do you know if filing for bankruptcy is an option? What are the pros and cons of doing so?

Do not ignore this notice; because if you do nothing, you could lose your home at a foreclosure sale. (No foreclosure sale can be held any sooner than ninety days after a notice of sale is issued and a notice of sale cannot be issued until thirty days after this notice.) Also, if you do nothing to pay what you owe, be careful of people who claim they can help you. There are many individuals and businesses that watch for the notices of sale in order to unfairly profit as a result of borrowers' distress.

You may feel you need help understanding what to do. There are a number of professional resources available, including home loan counselors and attorneys, who may assist you. Many legal services are lower-cost or even free, depending on your ability to pay. If you desire legal help in understanding your options or handling this default, you may obtain a referral (at no charge) by contacting the county bar association in the county where your home is located. These legal referral services also provide information about lower-cost or free legal services for those who qualify. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals")

"THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD  
RESULT IN YOUR  
LOSING YOUR HOME.

You may be eligible for mediation in front of a neutral third party to help save your home.

**CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you might benefit. Mediation **MUST** be requested between the time you receive the Notice of Default and no later than twenty days after the Notice of Trustee Sale is recorded.

**DO NOT DELAY.** If you do nothing, a notice of sale may be issued as soon as 30 days from the date of this notice of default. The notice of sale will provide a minimum of 120 days' notice of the date of the actual foreclosure sale.

**BE CAREFUL** of people who claim they can help you. There are many individuals and businesses that prey upon borrowers in distress.

**REFER TO THE CONTACTS BELOW** for sources of assistance.

SEEKING ASSISTANCE

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission

Telephone: . . . . . Web site: . . . . .

The United States Department of Housing and Urban Development

Telephone: . . . . . Web site: . . . . .

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys

Telephone: . . . . . Web site: . . . . ."

The beneficiary or trustee shall obtain the toll-free numbers and

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

web site information from the department for inclusion in the notice; and

(l) In the event the property secured by the deed of trust is residential real property, the name and address of the owner of any promissory notes or other obligations secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust; and

(9) That, for owner-occupied residential real property, before the notice of the trustee's sale is recorded, transmitted, or served, the beneficiary has complied with RCW 61.24.031 and, if applicable, RCW 61.24.163.

Sec. 10. RCW 61.24.040 and 2009 c 292 s 9 are each amended to read as follows:

A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, or if a letter under RCW 61.24.031 is required, at least one hundred twenty days before the sale, the trustee shall:

(a) Record a notice in the form described in (f) of this subsection in the office of the auditor in each county in which the deed of trust is recorded;

(b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and if their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in (f) of this subsection to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

(i) The borrower and grantor;

(ii) The beneficiary of any deed of trust or mortgagee of any mortgage, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iii) The vendee in any real estate contract, the lessee in any lease, or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iv) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale;

(v) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed; and

(vi) The occupants of property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, whether or not the occupant's rental agreement is recorded, which notice may be a single notice addressed to "occupants" for each unit known to the trustee or beneficiary;

(c) Cause a copy of the notice of sale described in (f) of this subsection to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in (f) of this subsection to be transmitted by both first-class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in (f) of this subsection to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the . . . . day of . . . . ., . . . ., at the hour of . . . . o'clock . . . . M. at . . . . . [street address and location if inside a building] in the City of . . . . ., State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of . . . . ., State of Washington, to-wit:

[If any personal property is to be included in the trustee's sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated . . . . ., . . . ., recorded . . . . ., . . . ., under Auditor's File No. . . . ., records of . . . . . County, Washington, from . . . . ., as Grantor, to . . . . ., as Trustee, to secure an obligation in favor of . . . . ., as Beneficiary, the beneficial interest in which was assigned by . . . . ., under an Assignment recorded under Auditor's File No. . . . . [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

III.

The default(s) for which this foreclosure is made is/are as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$ . . . . ., together with interest as provided in the note or other instrument secured from the . . . . day of . . . . ., . . . ., and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the . . . . day of . . . . ., . . . . The default(s) referred to in paragraph III must be cured by the . . . . day of . . . . ., . . . . (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the . . . . day of . . . . ., . . . . (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the . . . . day of . . . . ., . . . . (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:

.....  
.....  
.....

by both first-class and certified mail on the . . . . day of . . . . ., . . . ., proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served on the . . . . day of . . . . ., . . . ., with said written notice of default or the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130.

Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

.....  
..... , Trustee  
.....  
.....  
.....  
..... } Address  
.....  
..... } Phone

[Acknowledgment]

(g) If the borrower received a letter under RCW 61.24.031, the notice specified in subsection (1)(f) of this section shall also include the following additional language:

"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME.

You have only 20 DAYS from the recording date on this notice to pursue mediation.

**DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help.

SEEKING ASSISTANCE

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

- The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission  
Telephone: . . . . . Web site: . . . . .  
The United States Department of Housing and Urban Development  
Telephone: . . . . . Web site: . . . . .  
The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys  
Telephone: . . . . . Web site: . . . . ."

The beneficiary or trustee shall obtain the toll-free numbers and web site information from the department for inclusion in the notice.

(2) In addition to providing the borrower and grantor the notice of sale described in subsection (1)(f) of this section, the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

NOTICE OF FORECLOSURE

Pursuant to the Revised Code of Washington,

Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to . . . . ., the Beneficiary of your Deed

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the . . . . day of . . . . .

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the . . . . day of . . . . ., . . . [11 days before the sale date]. To date, these arrears and costs are as follows:

Inspection fees	\$ . . . .	\$ . . . .
.....	\$ . . . .	\$ . . . .
.....	\$ . . . .	\$ . . . .
TOTALS	\$ . . . .	\$ . . . .

To pay off the entire obligation secured by your Deed of Trust as of the . . . . . day of . . . . . you must pay a total of \$ . . . . in principal, \$ . . . . in interest, plus other costs and advances estimated to date in the amount of \$ . . . . . From and after the date of this notice you must submit a written request to the Trustee to obtain the total amount to pay off the entire obligation secured by your Deed of Trust as of the payoff date.

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

	Estimated amount	
Currently due	that will be due	
to reinstate	to reinstate	
on . . . . .	on . . . . .	
.....	.....	
	(11 days before	
	the date set	
	for sale)	

Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
---------	---

Delinquent payments

from . . . . .,

. . . , in the

amount of

\$ . . . /mo.: \$ . . . . \$ . . . .

Late charges in

the total

amount of: \$ . . . . \$ . . . .

Estimated Amounts

Attorneys' fees: \$ . . . . \$ . . . .

Trustee's fee: \$ . . . . \$ . . . .

Trustee's expenses:

(Itemization)

Title report \$ . . . . \$ . . . .

Recording fees \$ . . . . \$ . . . .

Service/Posting of Notices \$ . . . . \$ . . . .

Postage/Copying expense \$ . . . . \$ . . . .

Publication \$ . . . . \$ . . . .

Telephone charges \$ . . . . \$ . . . .

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the . . . . day of . . . . ., . . . [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate or to pay off the entire indebtedness may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement or the payoff amount so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to: . . . . ., whose address is . . . . ., telephone ( ) . . . . . AFTER THE . . . . DAY OF . . . . ., . . . , YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written request for current payoff or reinstatement amounts within ten days of receipt of your written request. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$ . . . . .) plus accrued interest, costs and advances, if any,

made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

NAME: .....  
ADDRESS: .....  
TELEPHONE NUMBER: .....

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

(3) In addition, the trustee shall cause a copy of the notice of sale described in subsection (1)(f) of this section (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale;

(4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;

(6) The trustee has no obligation to, but may, for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by (a) a public proclamation at the time and place fixed for sale in the notice of sale and if the continuance is beyond the date of sale, by giving notice of the new time and place of the sale by both first class and either certified or registered mail, return receipt requested, to the persons specified in subsection (1)(b)(i) and (ii) of this section to be deposited in the mail (i) not less than four days before the new date fixed for the sale if the sale is continued for up to seven days; or (ii) not more than three days after the date of the continuance by oral proclamation if the sale is continued for more than seven days, or, alternatively, (b) by giving notice of the time and place of the postponed sale in the manner and to the persons specified in subsection (1)(b), (c), (d), and (e) of this section and publishing a

copy of such notice once in the newspaper(s) described in subsection (3) of this section, more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under subsection (1) of this section, if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

(8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured;

(9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X. NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060;

(10) Only one copy of all notices required by this chapter need be given to a person who is both the borrower and the grantor. All notices required by this chapter that are given to a general partnership are deemed given to each of its general partners, unless otherwise agreed by the parties.

NEW SECTION. **Sec. 11.** A new section is added to chapter 61.24 RCW to read as follows:

(1) A borrower who has been referred to mediation before the effective date of this section may continue through the mediation process and does not lose his or her right to mediation.

(2) A borrower who has not been referred to mediation as of the effective date of this section may only be referred to mediation after a notice of default has been issued but no later than twenty days from the date a notice of sale is recorded.

(3) A borrower who has not been referred to mediation as of the effective date of this section and who has had a notice of sale recorded may only be referred to mediation if the referral is made before twenty days have passed from the date the notice of sale was recorded.

**Sec. 12.** RCW 61.24.172 and 2011 c 58 s 11 are each amended to read as follows:

The foreclosure fairness account is created in the custody of the state treasurer. All receipts received under RCW 61.24.174 must be deposited into the account. Only the director of the department of commerce or the director's designee may authorize expenditures

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

from the account. Funding to agencies and organizations under this section must be provided by the department through an interagency agreement or other applicable contract instrument. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account must be used as follows: (1) No less than ~~((eighty))~~ seventy-six percent must be used for the purposes of providing housing ~~((counselors for))~~ counseling activities to benefit borrowers, except that this amount may be less than ~~((eighty))~~ seventy-six percent only if necessary to meet the funding level specified for the office of the attorney general under subsection (2) of this section and the department under subsection (4) of this section; (2) up to six percent, or six hundred fifty-five thousand dollars per biennium, whichever amount is greater, to the office of the attorney general to be used by the consumer protection division to enforce this chapter; (3) up to two percent to the office of civil legal aid to be used for the purpose of contracting with qualified legal aid programs for legal representation of homeowners in matters relating to foreclosure. Funds provided under this subsection (3) must be used to supplement, not supplant, other federal, state, and local funds; (4) up to ~~((nine))~~ thirteen percent, or ~~((four hundred fifty one))~~ five hundred ninety thousand dollars per biennium, whichever amount is greater, to the department to be used for implementation and operation of the foreclosure fairness act; and (5) up to three percent to the department of financial institutions to conduct homeowner prepurchase and postpurchase outreach and education programs as defined in RCW 43.320.150.

The department shall enter into interagency agreements to contract with the Washington state housing finance commission and other appropriate entities to implement the foreclosure fairness act.

**Sec. 13.** RCW 61.24.010 and 2009 c 292 s 7 are each amended to read as follows:

- (1) The trustee of a deed of trust under this chapter shall be:
  - (a) Any domestic corporation or domestic limited liability corporation incorporated under Title 23B, 25, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident; or
  - (b) Any title insurance company authorized to insure title to real property under the laws of this state, or any title insurance agent licensed under chapter 48.17 RCW; or
  - (c) Any attorney who is an active member of the Washington state bar association at the time the attorney is named trustee; or
  - (d) Any professional corporation incorporated under chapter 18.100 RCW, any professional limited liability company formed under chapter 25.15 RCW, any general partnership, including limited liability partnerships, formed under chapter 25.04 RCW, all of whose shareholders, members, or partners, respectively, are either licensed attorneys or entities, provided all of the owners of those entities are licensed attorneys, or any domestic corporation wholly owned by any of the entities under this subsection (1)(d); or
  - (e) Any agency or instrumentality of the United States government; or
  - (f) Any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

(3) The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the deed of trust.

(4) The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor.

**Sec. 14.** RCW 61.24.050 and 1998 c 295 s 7 are each amended to read as follows:

~~((When delivered))~~ (1) Upon physical delivery of the trustee's deed to the purchaser, or a different grantee as designated by the purchaser following the trustee's sale, the trustee's deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee's sale which the grantor had or had the power to convey at the time of the execution of the deed of trust, and such as the grantor may have thereafter acquired. Except as provided in subsection (2) of this section, if the trustee accepts a bid, then the trustee's sale is final as of the date and time of such acceptance if the trustee's deed is recorded within fifteen days thereafter. After a trustee's sale, no person shall have any right, by statute or otherwise, to redeem the property sold at the trustee's sale.

(2)(a) Up to the eleventh day following the trustee's sale, the trustee, beneficiary, or authorized agent for the beneficiary may declare the trustee's sale and trustee's deed void for the following reasons:

(i) The trustee, beneficiary, or authorized agent for the beneficiary assert that there was an error with the trustee foreclosure sale process including, but not limited to, an erroneous opening bid amount made by or on behalf of the foreclosing beneficiary at the trustee's sale;

(ii) The borrower and beneficiary, or authorized agent for the beneficiary, had agreed prior to the trustee's sale to a loan modification agreement, forbearance plan, shared appreciation mortgage, or other loss mitigation agreement to postpone or discontinue the trustee's sale; or

(iii) The beneficiary or authorized agent for the beneficiary had accepted funds that fully reinstated or satisfied the loan even if the beneficiary or authorized agent for the beneficiary had no legal duty to do so.

(b) This subsection does not impose a duty upon the trustee any different than the obligations set forth under RCW 61.24.010 (3) and (4).

(3) The trustee must refund the bid amount to the purchaser no later than the third day following the postmarked mailing of the rescission notice described under subsection (4) of this section.

(4) No later than fifteen days following the voided trustee's sale date, the trustee shall send a notice in substantially the following form by first-class mail and certified mail, return receipt requested, to all parties entitled to notice under RCW 61.24.040(1) (b) through (e):

**NOTICE OF RESCISSION OF TRUSTEE'S SALE**  
 NOTICE IS HEREBY GIVEN that the trustee's sale that occurred on (trustee's sale date) is rescinded and declared void because (insert the applicable reason(s) permitted under RCW 61.24.050(2)(a)).

The trustee's sale occurred pursuant to that certain Notice of Trustee's Sale dated . . . , . . . , recorded . . . , . . . , under Auditor's File No. . . . , records of . . . County, Washington, and that certain Deed of Trust dated . . . , . . . , recorded . . . , . . . , under Auditor's File No. . . . , records of . . . County, Washington, from . . . , as Grantor, to . . . , as . . . , as original Beneficiary, concerning the following described property, situated in the County(ies) of . . . , State of Washington, to wit:

(Legal description)  
 Commonly known as (common property address)

(5) If the reason for the rescission stems from subsection (2)(a) (i) or (ii) of this section, the trustee may set a new sale date not less than forty-five days following the mailing of the notice of rescission

of trustee's sale. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part of the property is situated, once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

**NEW SECTION. Sec. 15.** Section 12 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 Hobbs and Benton 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 Hobbs and others to Engrossed Substitute House Bill No. 2614.

The motion by Senator Hobbs 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 1 of the title, after "Relating to" strike the remainder of the title and insert "assisting homeowners in crisis by providing alternatives, remedies, and assistance; amending RCW 18.86.120, 4.16.040, 61.24.031, 61.24.160, 61.24.163, 61.24.169, 61.24.174, 61.24.030, 61.24.040, 61.24.172, 61.24.010, and 61.24.050; adding a new section to chapter 64.04 RCW; adding a new section to chapter 61.24 RCW; and declaring an emergency."

MOTION

On motion of Senator Hobbs, the rules were suspended, Engrossed Substitute House Bill No. 2614 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 Engrossed Substitute House Bill No. 2614 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2614 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Holmquist Newbry

Excused: Senator Harper

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2614 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.

MESSAGE FROM THE HOUSE

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6135 with the following amendment(s): 6135-S AMH ENGR H4459.E

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 7.84.030 and 2011 c 320 s 14 are each amended to read as follows:

(1) An infraction proceeding is initiated by the issuance and service of a printed notice of infraction and filing of a printed or electronic copy of the notice of infraction.

(2)(a) A notice of infraction may be issued by a person authorized to enforce the provisions of the title or chapter in which the infraction is established, or by a person authorized by an interlocal agreement entered into under RCW 7.84.140, when the infraction occurs in that person's presence.

(b) A person who is a peace officer as defined in chapter 10.93 RCW may detain the person receiving the infraction for a reasonable period of time necessary to identify the person, check for outstanding warrants, and complete and issue a notice of infraction under RCW 7.84.050. A person who is to receive a notice of infraction is required to identify himself or herself to the peace officer by giving the person's name, address, and date of birth. Upon request, the person shall produce reasonable identification, which may include a driver's license or identicard. Any person who fails to comply with the requirement to identify himself or herself and give the person's current address may be found to have committed an infraction.

(3) A court may issue a notice of infraction if a person authorized to enforce the provisions of the title or chapter in which the infraction is established, or by a person authorized by an interlocal agreement entered into under RCW 7.84.140, files with the court a written statement that the infraction was committed in that person's presence or that the officer has reason to believe an infraction was committed.

(4) Service of a notice of infraction issued under subsection (2) or (3) of this section shall be as provided by court rule.

(5) A notice of infraction shall be filed with a court having jurisdiction within five days of issuance, excluding Saturdays, Sundays, and holidays.

**Sec. 2.** RCW 7.84.020 and 2003 c 39 s 3 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definition in this section applies throughout this chapter unless the context clearly requires otherwise.

"Infraction" means an offense which, by the terms of Title 76, 77, 79, or 79A RCW or ~~((chapter 43.30 RCW))~~ RCW 7.84.030(2)(b) and rules adopted under these titles and ~~((chapters))~~ section, is declared not to be a criminal offense and is subject to the provisions of this chapter.

**Sec. 3.** RCW 9.94A.515 and 2010 c 289 s 11 and 2010 c 227 s 9 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)

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

- XIV Murder 2 (RCW 9A.32.050)
- Trafficking 1 (RCW 9A.40.100(1))
- XIII Malicious explosion 2 (RCW 70.74.280(2))
- Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
- Assault of a Child 1 (RCW 9A.36.120)
- Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
- Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
- Rape 1 (RCW 9A.44.040)
- Rape of a Child 1 (RCW 9A.44.073)
- Trafficking 2 (RCW 9A.40.100(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)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- 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))		Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
Rape of a Child 3 (RCW 9A.44.079)		IV Arson 2 (RCW 9A.48.030)
Theft of a Firearm (RCW 9A.56.300)		Assault 2 (RCW 9A.36.021)
Unlawful Storage of Ammonia (RCW 69.55.020)		Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
V Abandonment of Dependent Person 2 (RCW 9A.42.070)		Assault by Watercraft (RCW 79A.60.060)
Advancing money or property for extortionate extension of credit (RCW 9A.82.030)		Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))		Cheating 1 (RCW 9A.46.1961)
Child Molestation 3 (RCW 9A.44.089)		Commercial Bribery (RCW 9A.68.060)
Criminal Mistreatment 2 (RCW 9A.42.030)		Counterfeiting (RCW 9A.16.035(4))
Custodial Sexual Misconduct 1 (RCW 9A.44.160)		Endangerment with a Controlled Substance (RCW 9A.42.100)
Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))		Escape 1 (RCW 9A.76.110)
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)		Hit and Run--Injury (RCW 46.52.020(4)(b))
Driving While Under the Influence (RCW 46.61.502(6))		Hit and Run with Vessel--Injury Accident (RCW 79A.60.200(3))
Extortion 1 (RCW 9A.56.120)		Identity Theft 1 (RCW 9A.35.020(2))
Extortionate Extension of Credit (RCW 9A.82.020)		Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)		Influencing Outcome of Sporting Event (RCW 9A.82.070)
Incest 2 (RCW 9A.64.020(2))		Malicious Harassment (RCW 9A.36.080)
Kidnapping 2 (RCW 9A.40.030)		Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68( <del>FA</del> )) <u>A</u> .070(2))
Perjury 1 (RCW 9A.72.020)		Residential Burglary (RCW 9A.52.025)
Persistent prison misbehavior (RCW 9.94.070)		Robbery 2 (RCW 9A.56.210)
Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))		Theft of Livestock 1 (RCW 9A.56.080)
Possession of a Stolen Firearm (RCW 9A.56.310)		Threats to Bomb (RCW 9.61.160)
Rape 3 (RCW 9A.44.060)		Trafficking in Stolen Property 1 (RCW 9A.82.050)
Rendering Criminal Assistance 1 (RCW 9A.76.070)		Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))		Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
Sexual Misconduct with a Minor 1 (RCW 9A.44.093)		Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
Sexually Violating Human Remains (RCW 9A.44.105)		Unlawful transaction of insurance business (RCW 48.15.023(3))
Stalking (RCW 9A.46.110)		Unlicensed practice as an insurance professional (RCW 48.17.063(2))
		Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1))

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

and (2))

9A.56.360(2))

- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)  
 Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))  
 Willful Failure to Return from Furlough (RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))  
 Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))  
 Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))  
 Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)  
 Criminal Gang Intimidation (RCW 9A.46.120)  
 Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))  
 Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)  
 Introducing Contraband 2 (RCW 9A.76.150)  
 Malicious Injury to Railroad Property (RCW 81.60.070)  
 Mortgage Fraud (RCW 19.144.080)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)  
 Organized Retail Theft 1 (RCW 9A.56.350(2))  
 Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)  
 Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)  
 Promoting Prostitution 2 (RCW 9A.88.080)  
 Retail Theft with Extenuating Circumstances 1 (RCW
- Securities Act violation (RCW 21.20.400)  
 Tampering with a Witness (RCW 9A.72.120)  
 Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))  
 Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))  
 Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Hunting of Big Game 1  
(RCW 77.15.410(3)(b))
- Unlawful Imprisonment (RCW 9A.40.040)  
 Unlawful possession of firearm in the second degree (RCW 9.41.040(2))  
Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
- Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)  
 Willful Failure to Return from Work Release (RCW 72.65.070)
- II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
- Computer Trespass 1 (RCW 9A.52.110)  
 Counterfeiting (RCW 9.16.035(3))
- Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
- Escape from Community Custody (RCW 72.09.310)  
 Failure to Register as a Sex Offender (second or subsequent offense) (~~(RCW 9A.44.130(1)(a))~~)  
(RCW 9A.44.132(1)(b))
- Health Care False Claims (RCW 48.80.030)  
 Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)  
 Malicious Mischief 1 (RCW 9A.48.070)  
 Organized Retail Theft 2 (RCW 9A.56.350(3))  
 Possession of Stolen Property 1 (RCW 9A.56.150)  
 Possession of a Stolen Vehicle (RCW 9A.56.068)  
 Retail Theft with Extenuating Circumstances 2 (RCW

- 9A.56.360(3))
- Theft 1 (RCW 9A.56.030)
- Theft of a Motor Vehicle (RCW 9A.56.065)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))
- Voyeurism (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Spotlighting Big Game 1 (RCW 77.15.450(3)(b))
- Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft 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)
- Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Release of Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW 9.91.144)
- Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))
- Unlawful Use of Prohibited Aquatic Animal Species (RCW 77.15.253(3))
- Vehicle Prowl 1 (RCW 9A.52.095)
- Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))
- Sec. 4.** RCW 77.08.010 and 2011 c 324 s 3 are each reenacted and amended to read as follows:
- The definitions in this section apply throughout this title or rules adopted under this title unless the context clearly requires otherwise.
- (1) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.
- (2) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under subsections (3), (28), (40), (44), (60), and (61) of this section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).
- (3) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.
- (4) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.
- (5) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.
- (6) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.
- (7) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.
- (8) "Commercial" means related to or connected with buying, selling, or bartering.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(9) "Commission" means the state fish and wildlife commission.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Contraband" means any property that is unlawful to produce or possess.

(12) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(13) "Department" means the department of fish and wildlife.

(14) "Director" means the director of fish and wildlife.

(15) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(16) "Ex officio fish and wildlife officer" means ((a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions));

(a) A commissioned officer of a municipal, county, or state agency having as its primary function the enforcement of criminal laws in general, while the officer is acting in the respective jurisdiction of that agency;

(b) An officer or special agent commissioned by one of the following: The national marine fisheries service; the Washington state parks and recreation commission; the United States fish and wildlife service; the Washington state department of natural resources; the United States forest service; or the United States parks service, if the agent or officer is in the respective jurisdiction of the primary commissioning agency and is acting under a mutual law enforcement assistance agreement between the department and the primary commissioning agency;

(c) A commissioned fish and wildlife peace officer from another state who meets the training standards set by the Washington state criminal justice training commission pursuant to RCW 10.93.090, 43.101.080, and 43.101.200, and who is acting under a mutual law enforcement assistance agreement between the department and the primary commissioning agency; or

(d) A Washington state tribal police officer who successfully completes the requirements set forth under RCW 43.101.157, is employed by a tribal nation that has complied with RCW 10.92.020(2) (a) and (b), and is acting under a mutual law enforcement assistance agreement between the department and the tribal government.

(17) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(18) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(19) "Fish broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together.

(20) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(21) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(24) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(25) "Game farm" means property on which wildlife is held ~~((or)), confined, propagated, hatched, fed, or otherwise~~ raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(26) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(27) "Illegal items" means those items unlawful to be possessed.

(28) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(29) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(30) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(31) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(32) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(33) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(34) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(35) "Owner" means the person in whom is vested the ownership dominion, or title of the property.

(36) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(37) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(38) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(39) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(40) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(41) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(42) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(43) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(44) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(45) "Resident" ((means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection)) has the same meaning as defined in section 5 of this act.

(46) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(47) "Saltwater" means those marine waters seaward of river mouths.

(48) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(49) "Senior" means a person seventy years old or older.

(50) "Shark fin" means a raw, dried, or otherwise processed detached fin or tail of a shark.

(51)(a) "Shark fin derivative product" means any product intended for use by humans or animals that is derived in whole or in part from shark fins or shark fin cartilage.

(b) "Shark fin derivative product" does not include a drug approved by the United States food and drug administration and available by prescription only or medical device or vaccine approved by the United States food and drug administration.

(52) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(53) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(54) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(55) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(56) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(57) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(58) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(59) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(60) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(61) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(62) "Wholesale fish dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barter, or exchanges or attempts to sell, barter, or exchange fish or shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce.

(63) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state (~~and the species *Rana catesbeiana* (bullfrog)~~). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(64) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(65) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(66) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(67) "Anadromous game fish buyer" means a person who purchases or sells steelhead trout and other anadromous game fish harvested by Indian fishers lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director.

(68) "Building" means a private domicile, garage, barn, or public or commercial building.

(69) "Fish buyer" means a person engaged by a wholesale fish dealer to purchase food fish or shellfish from a licensed commercial fisher.

(70) "Food, food waste, or other substance" includes human and pet food or other waste or garbage that could attract large wild carnivores.

(71) "Fur dealer" means a person who purchases, receives, or resells raw furs for commercial purposes.

(72)(a) "Intentionally feed, attempt to feed, or attract" means to purposefully or knowingly provide, leave, or place in, on, or about any land or building any food, food waste, or other substance that attracts or could attract large wild carnivores to that land or building.

(b) "Intentionally feed, attempt to feed, or attract" does not include keeping food, food waste, or other substance in an enclosed garbage receptacle or other enclosed container unless specifically directed by a fish and wildlife officer or animal control authority to secure the receptacle or container in another manner.

(73) "Large wild carnivore" includes wild bear, cougar, and wolf.

(74) "Natural person" means a human being.

(75)(a) "Negligently feed, attempt to feed, or attract" means to provide, leave, or place in, on, or about any land or building any food, food waste, or other substance that attracts or could attract

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

large wild carnivores to that land or building, without the awareness that a reasonable person in the same situation would have with regard to the likelihood that the food, food waste, or other substance could attract large wild carnivores to the land or building.

(b) "Negligently feed, attempt to feed, or attract" does not include keeping food, food waste, or other substance in an enclosed garbage receptacle or other enclosed container unless specifically directed by a fish and wildlife officer or animal control authority to secure the receptacle or container in another manner.

(76) "Taxidermist" means a person who, for commercial purposes, creates lifelike representations of fish and wildlife using fish and wildlife parts and various supporting structures.

(77) "Wildlife meat cutter" means a person who packs, cuts, processes, or stores wildlife for consumption for another for commercial purposes.

**NEW SECTION. Sec. 5.** A new section is added to chapter 77.08 RCW to read as follows:

For the purposes of this title or rules adopted under this title, "resident" means:

(1) A natural person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, is not licensed to hunt or fish as a resident in another state or country, and is not receiving resident benefits of another state or country.

(a) For purposes of this section, "permanent place of abode" means a residence in this state that a person maintains for personal use.

(b) A natural person can demonstrate that the person has maintained a permanent place of abode in Washington by showing that the person:

(i) Uses a Washington state address for federal income tax or state tax purposes;

(ii) Designates this state as the person's residence for obtaining eligibility to hold a public office or for judicial actions;

(iii) Is a registered voter in the state of Washington; or

(iv) Is a custodial parent with a child attending prekindergarten, kindergarten, elementary school, middle school, or high school in this state.

(c) A natural person can demonstrate the intent to continue residing within the state by showing that he or she:

(i) Has a valid Washington state driver's license; or

(ii) Has a valid Washington state identification card, if the person is not eligible for a Washington state driver's license; and

(iii) Has registered the person's vehicle or vehicles in Washington state.

(2) The spouse of a member of the United States armed forces if the member qualifies as a resident under subsection (1), (3), or (4) of this section, or a natural person age eighteen or younger who does not qualify as a resident under subsection (1) of this section, but who has a parent or legal guardian who qualifies as a resident under subsection (1), (3), or (4) of this section.

(3) A member of the United States armed forces temporarily stationed in Washington state on predeployment orders. A copy of the person's military orders is required to meet this condition.

(4) A member of the United States armed forces who is permanently stationed in Washington state or who designates Washington state on their military "state of legal residence certificate" or enlistment or re-enlistment documents. A copy of the person's "state of legal residence certificate" or enlistment or re-enlistment documents is required to meet the conditions of this subsection.

**Sec. 6.** RCW 77.95.320 and 2009 c 340 s 2 are each amended to read as follows:

(1) The department shall establish a program that utilizes department-partner agreements for the resumption or continued operation and management of state-owned salmonid hatcheries (~~(now closed or scheduled for closure during the 2009-2011 biennium)~~). To implement the program, the department shall accept and review applications to determine the appropriateness of the partner to manage and operate selected salmonid hatcheries. The department shall accelerate the application process relating to any hatchery currently in operation to avoid cessation of ongoing salmon production.

(2)(a) To select a partner, the department shall develop and apply criteria identifying the appropriateness of a potential partner. The criteria must seek to ensure that the partner has a long-range business plan, which may include the sale of hatchery surplus salmon, including eggs and carcasses, to ensure the long-range future solvency of the partnership. The business plan may also allow the partner to harvest hatchery chum salmon in a designated area through persons under contract with the partner as provided under a permit from the department or by rule of the commission. All chum salmon harvested must be sold at prices commensurate with the current market and all funds must be utilized by the partner to operate the hatchery.

(b) Partners under this section must be:

(i) Qualified under section 501(c)(3) of the internal revenue code;

(ii) A for-profit private entity; or

(iii) A federally recognized tribe.

(3) The department shall place a higher priority on applications from partners that provide for the maximum resumption or continuation of existing hatchery production in a manner consistent with the mandate contained in RCW 77.04.012 to maintain the economic well-being and stability of the fishing industry.

(4) Agreements entered into with partners under this section must be consistent with existing state laws, agency rules, collective bargaining agreements, hatchery management policy involving species listed under the federal endangered species act, or, in the case of a tribal partner, any applicable tribal hatchery management policy or recreational and commercial harvest policy. Agreements under this section must also require that partners conducting hatchery operations maintain staff with comparable qualifications to those identified in the class specifications for the department's fish hatchery personnel.

(5) All partnership agreements entered into under this section must contain a provision that requires the partner to hold harmless the department and the state for any civil liability arising from the partner's participation in the agreement or activities at the subject hatchery or hatcheries.

(6) All partnership agreements entered into under this section must identify any maintenance or improvements to be made to the hatchery facility, and the source of funding for such maintenance or improvements. If funding for the maintenance or improvements is to come from state funds or revenue sources previously received by the department, the work must be performed either by employees in the classified service or in compliance with the contracting procedures set forth in RCW 41.06.142.

(7) If deemed necessary and appropriate by the director, department enforcement officers may conduct background checks on potential partners described by subsection (2)(b)(i) and (ii) of this section prior to the department executing a partnership agreement.

**Sec. 7.** RCW 77.15.030 and 1999 c 258 s 1 are each amended to read as follows:

Except as provided in RCW 77.15.260(2)(b), where it is unlawful to hunt, take, fish, possess, or traffic in big game or protected or endangered fish or wildlife, then each individual animal unlawfully taken or possessed is a separate offense.

**Sec. 8.** RCW 77.15.050 and 2009 c 333 s 1 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, as used in this chapter, "conviction" means((:

~~(a)) a final conviction in a state or municipal court((:~~

~~(b) A failure to appear at a hearing to contest an infraction or criminal citation; or~~

~~(c) An unvacated forfeiture of bail paid as a final disposition for an offense)).~~

(2) A plea of guilty((:)) or a finding of guilt for a violation of this title or department rule ~~((of the commission or director))~~ constitutes a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended.

**Sec. 9.** RCW 77.15.075 and 2009 c 204 s 1 are each amended to read as follows:

(1) Fish and wildlife officers ~~((and ex officio fish and wildlife officers shall enforce this title, rules of the department, and other statutes as prescribed by the legislature. Fish and wildlife officers who are not ex officio officers))~~ shall have and exercise, throughout the state, such police powers and duties as are vested in sheriffs and peace officers generally. Fish and wildlife officers are general authority Washington peace officers.

(2) An applicant for a fish and wildlife officer position must be a citizen of the United States of America who can read and write the English language. ((All fish and wildlife officers employed after June 13, 2002, must successfully complete the basic law enforcement academy course, known as the basic course, sponsored by the criminal justice training commission, or the basic law enforcement equivalency certification, known as the equivalency course, provided by the criminal justice training commission. All officers employed on June 13, 2002, must have successfully completed the basic course, the equivalency course, or the supplemental course in criminal law enforcement, known as the supplemental course, offered under chapter 155, Laws of 1985. Any officer who has not successfully completed the basic course, the equivalency course, or the supplemental course must complete the basic course or the equivalency course within fifteen months of June 13, 2002.

(2) Fish and wildlife officers are peace officers)) Before a person may be appointed to act as a fish and wildlife officer, the person shall meet the minimum standards for employment with the department, including successful completion of a psychological examination and polygraph examination or similar assessment procedure administered in accordance with the requirements of RCW 43.101.095(2).

(3) Any liability or claim of liability under chapter 4.92 RCW that arises out of the exercise or alleged exercise of authority by a fish and wildlife officer rests with the department unless the fish and wildlife officer acts under the direction and control of another agency or unless the liability is otherwise assumed under an agreement between the department and another agency.

~~(4) ((Fish and wildlife officers may serve and execute warrants and processes issued by the courts.~~

~~(5))~~ The department may utilize the services of a volunteer chaplain as provided under chapter 41.22 RCW.

**Sec. 10.** RCW 77.15.080 and 2002 c 281 s 8 are each amended to read as follows:

(1) Based upon articulable facts that a person is engaged in fishing, harvesting, or hunting activities, fish and wildlife officers and ex officio fish and wildlife officers have the authority to temporarily stop the person and check for valid licenses, tags, permits, stamps, or catch record cards, and to inspect all fish, shellfish, seaweed, and wildlife in possession as well as the equipment being used to ensure compliance with the requirements of this title~~((, and~~). Fish and wildlife officers and ex officio fish and wildlife officers also may request that the person ((~~to~~)) write his

or her signature for comparison with the signature on ~~((the))~~ his or her fishing, harvesting, or hunting license. Failure to comply with the request is prima facie evidence that the person is not the person named on the license. ~~((For licenses purchased over the internet or telephone,))~~ Fish and wildlife officers may require the person, if age ~~((eighteen))~~ sixteen or older, to exhibit a driver's license or other photo identification.

(2) Based upon articulable facts that a person is transporting a prohibited aquatic animal species or any aquatic plant, fish and wildlife officers and ex officio fish and wildlife officers have the authority to temporarily stop the person and inspect the watercraft to ensure that the watercraft and associated equipment are not transporting prohibited aquatic animal species or aquatic plants.

**Sec. 11.** RCW 77.15.100 and 2009 c 333 s 39 are each amended to read as follows:

(1) ~~((Unless otherwise provided in this title,))~~ Fish, shellfish, ((or wildlife unlawfully taken or possessed, or involved in a violation shall be forfeited to the state upon conviction. Unless already held by, sold, destroyed, or disposed of by the department, the court shall order such fish or wildlife to be delivered to the department. Where delay will cause loss to the value of the property and a ready wholesale buying market exists, the department may sell property to a wholesale buyer at a fair market value.

(2) When seized property is forfeited to the department, the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release the property to the agency for the use of enforcing this title, or sell such property and deposit the proceeds into the fish and wildlife enforcement reward account established under RCW 77.15.425. Any sale of other property shall be at public auction or after public advertisement reasonably designed to obtain the highest price. The time, place, and manner of holding the sale shall be determined by the director. The director may contract for the sale to be through the department of general administration as state surplus property, or, except where not justifiable by the value of the property, the director shall publish notice of the sale once a week for at least two consecutive weeks before the sale in at least one newspaper of general circulation in the county in which the sale is to be held)) and wildlife are property of the state under RCW 77.04.012. Fish and wildlife officers may sell seized, commercially harvested fish and shellfish to a wholesale buyer and deposit the proceeds into the fish and wildlife enforcement reward account under RCW 77.15.425. Seized, recreationally harvested fish, shellfish, and wildlife may be donated to nonprofit charitable organizations. The charitable organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code.

(2) Unless otherwise provided in this title, fish, shellfish, or wildlife taken, possessed, or harvested in violation of this title or department rule shall be forfeited to the state upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions. For criminal cases resulting in other types of dispositions, the fish, shellfish, or wildlife may be returned, or its equivalent value paid, if the fish, shellfish, or wildlife have already been donated or sold.

**NEW SECTION. Sec. 12.** A new section is added to chapter 77.15 RCW to read as follows:

(1) A person is guilty of unlawfully hunting on, or retrieving hunted wildlife from, the property of another if the person knowingly enters or remains unlawfully in or on the premises of another for the purpose of hunting for wildlife or retrieving hunted wildlife.

(2) In any prosecution under this section, it is a defense that:

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(a) The premises were at the time open to members of the public for the purpose of hunting, and the actor complied with all lawful conditions imposed on access to or remaining on the premises;

(b) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain on the premises for the purpose of hunting or retrieving hunted wildlife;

(c) The actor reasonably believed that the premises were not privately owned; or

(d) The actor, after making all reasonable attempts to contact the owner of the premises, retrieved the hunted wildlife for the sole purpose of avoiding a violation of the prohibition on the waste of fish and wildlife as provided in RCW 77.15.170. The defense in this subsection only applies to the retrieval of hunted wildlife and not to the actual act of hunting itself.

(3) Unlawfully hunting on or retrieving hunted wildlife from the property of another is a misdemeanor.

(4) If a person unlawfully hunts and kills wildlife, or retrieves hunted wildlife that he or she has killed, on the property of another, then, upon conviction of unlawfully hunting on, or retrieving hunted wildlife from, the property of another, the department shall revoke all hunting licenses and tags and order a suspension of the person's hunting privileges for two years.

(5) Any wildlife that is unlawfully hunted on or retrieved from the property of another must be seized by fish and wildlife officers. Forfeiture and disposition of the wildlife is pursuant to RCW 77.15.100.

**NEW SECTION. Sec. 13.** A new section is added to chapter 77.15 RCW to read as follows:

When seized property, other than fish, shellfish, and wildlife, is judicially forfeited to the department, the department may: (1) Retain it for official use unless the property is required to be destroyed; (2) upon application by any law enforcement agency of the state, release the property to the agency for use in enforcing this title; (3) donate the property as provided under RCW 77.130.060; or (4) sell the property and deposit the proceeds into the fish and wildlife enforcement reward account created in RCW 77.15.425. Any sale of the property must be done in accordance with RCW 77.130.010(1) and 77.130.020. However, the requirement in those sections for notice to owners does not apply.

**Sec. 14.** RCW 77.15.110 and 2002 c 127 s 2 are each amended to read as follows:

(1) For purposes of this chapter, a person acts for commercial purposes if the person engages in conduct that relates to commerce in fish, seaweed, shellfish, or wildlife or any parts thereof. Commercial conduct may include taking, delivering, selling, buying, or trading fish, seaweed, shellfish, or wildlife where there is present or future exchange of money, goods, or any valuable consideration. Evidence that a person acts for commercial purposes includes, but is not limited to, the following conduct:

(a) Using gear typical of that used in commercial fisheries;

(b) Exceeding the bag or possession limits for personal use by taking or possessing more than three times the amount of fish, seaweed, shellfish, or wildlife allowed;

(c) Delivering or attempting to deliver fish, seaweed, shellfish, or wildlife to a person who sells or resells fish, seaweed, shellfish, or wildlife including any licensed or unlicensed wholesaler;

(d) Taking fish or shellfish using a vessel designated on a commercial fishery license or using gear not authorized in a personal use fishery;

(e) Using a commercial fishery license;

(f) Selling or dealing in raw furs for a fee or in exchange for goods or services; ((or))

(g) Performing taxidermy service on fish, shellfish, or wildlife belonging to another person for a fee or receipt of goods or services;

or

(h) Packs, cuts, processes, or stores the meat of wildlife for consumption, for a fee or in exchange for goods or services.

(2) For purposes of this chapter, the value of any fish, seaweed, shellfish, or wildlife may be proved based on evidence of legal or illegal sales involving the person charged or any other person, or offers to sell or solicitation of offers to sell by the person charged or by any other person, or of any market price for the fish, seaweed, shellfish, or wildlife including market price for farm-raised game animals. The value assigned to specific fish, seaweed, shellfish, or wildlife by RCW 77.15.420 may be presumed to be the value of such fish, seaweed, shellfish, or wildlife. It is not relevant to proof of value that the person charged misrepresented that the fish, seaweed, shellfish, or wildlife was taken in compliance with law if the fish, seaweed, shellfish, or wildlife was unlawfully taken and had no lawful market value.

**Sec. 15.** RCW 77.15.130 and 1998 c 190 s 14 are each amended to read as follows:

(1) A person is guilty of unlawful taking of protected fish or wildlife if:

(a) The person hunts, fishes, possesses, or maliciously kills protected fish or wildlife, or the person possesses or maliciously destroys the eggs or nests of protected fish or wildlife, and the taking has not been authorized by rule of the commission; or

(b) The person violates any rule of the commission regarding the taking, harming, harassment, possession, or transport of protected fish or wildlife.

(2) Unlawful taking of protected fish or wildlife is a misdemeanor.

(3) In addition to the penalties set forth in subsection (2) of this section, if a person is convicted of violating this section and the violation results in the death of protected wildlife listed in this subsection, the court shall require payment of the following amounts for each animal killed or possessed. This is a criminal wildlife penalty assessment that must be paid to the clerk of the court and distributed each month to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425:

(a) Ferruginous hawk, two thousand dollars;

(b) Common loon, two thousand dollars;

(c) Bald eagle, two thousand dollars;

(d) Golden eagle, two thousand dollars; and

(e) Peregrine falcon, two thousand dollars.

(4) If two or more persons are convicted under subsection (1) of this section, and subsection (3) of this section is applicable, the criminal wildlife penalty assessment must be imposed against the persons jointly and separately.

(5)(a) The criminal wildlife penalty assessment under subsection (3) of this section must be imposed regardless of and in addition to any sentence, fines, or costs otherwise provided for violating any provision of this section. The criminal wildlife penalty assessment must be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect.

(b) This subsection may not be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(6) A defaulted criminal wildlife penalty assessment authorized under subsection (3) of this section may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including but not limited to vacation of a deferral of sentencing or vacation of a suspension of sentence.

(7) The department shall revoke the hunting license and suspend the hunting privileges of a person assessed a criminal wildlife penalty assessment under this section until the penalty assessment is

paid through the registry of the court in which the penalty assessment was assessed.

(8) The criminal wildlife penalty assessments provided in subsection (3) of this section must be doubled in the following instances:

(a) When a person commits a violation that requires payment of a criminal wildlife penalty assessment within five years of a prior gross misdemeanor or felony conviction under this title; or

(b) When the person killed the protected wildlife in question with the intent of bartering, selling, or otherwise deriving economic profit from the wildlife or wildlife parts.

**Sec. 16.** RCW 77.15.160 and 2000 c 107 s 237 are each amended to read as follows:

~~(A person is guilty of an infraction, which shall)~~ The following acts are infractions and must be cited and punished as provided under chapter 7.84 RCW~~(-if the person)~~:

(1) (Fails to immediately record a catch of fish or shellfish on a catch record card required by RCW 77.32.430, or required by rule of the commission under this title; or

(2) Fishes for personal use using barbed hooks in violation of any rule; or

(3) Violates any other rule of the commission or director that is designated by rule as an infraction)) Fishing and shellfishing infractions:

(a) Barbed hooks: Fishing for personal use with barbed hooks in violation of any department rule.

(b) Catch recording: Failing to immediately record a catch of fish or shellfish on a catch record card as required by RCW 77.32.430 or department rule.

(c) Catch reporting: Failing to return a catch record card to the department for other than Puget Sound Dungeness crab, as required by department rule.

(d) Recreational fishing: Fishing for fish or shellfish and, without yet possessing fish or shellfish, the person:

(i) Owns, but fails to have in the person's possession the license or the catch record card required by chapter 77.32 RCW for such an activity; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of fishing for fish or shellfish. This subsection does not apply to use of a net to take fish under RCW 77.15.580 or the unlawful use of shellfish gear for personal use under RCW 77.15.382.

(e) Seaweed: Taking, possessing, or harvesting less than two times the daily possession limit of seaweed:

(i) While owning, but not having in the person's possession, the license required by chapter 77.32 RCW; or

(ii) In violation of any rule of the department or the department of natural resources regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(f) Unclassified fish or shellfish: Taking unclassified fish or shellfish in violation of any department rule by killing, fishing, taking, holding, possessing, or maliciously injuring or harming fish or shellfish that is not classified as game fish, food fish, shellfish, protected fish, or endangered fish.

(g) Wasting fish or shellfish: Killing, taking, or possessing fish or shellfish having a value of less than two hundred fifty dollars and allowing the fish or shellfish to be wasted.

(2) Hunting infractions:

(a) Eggs or nests: Maliciously, and without permit authorization, destroying, taking, or harming the eggs or active nests of a wild bird not classified as endangered or protected. For purposes of this subsection, "active nests" means nests that contain eggs or fledglings.

(b) Unclassified wildlife: Taking unclassified wildlife in

violation of any department rule by killing, hunting, taking, holding, possessing, or maliciously injuring or harming wildlife that is not classified as big game, game animals, game birds, protected wildlife, or endangered wildlife.

(c) Wasting wildlife: Killing, taking, or possessing wildlife that is not classified as big game and has a value of less than two hundred fifty dollars, and allowing the wildlife to be wasted.

(d) Wild animals: Hunting for wild animals not classified as big game and, without yet possessing the wild animals, the person owns, but fails to have in the person's possession, all licenses, tags, or permits required by this title.

(e) Wild birds: Hunting for and, without yet possessing a wild bird or birds, the person:

(i) Owns, but fails to have in the person's possession, all licenses, tags, stamps, and permits required under this title; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of hunting wild birds.

(3) Trapping, taxidermy, fur dealing, and wildlife meat cutting infractions:

(a) Recordkeeping and reporting: If a person is a taxidermist, fur dealer, or wildlife meat cutter who is processing, holding, or storing wildlife for commercial purposes, failing to:

(i) Maintain records as required by department rule; or

(ii) Report information from these records as required by department rule.

(b) Trapper's report: Failing to report trapping activity as required by department rule.

(4) Other infractions:

(a) Contests: Conducting, holding, or sponsoring a hunting contest, a fishing contest involving game fish, or a competitive field trial using live wildlife.

(b) Other rules: Violating any other department rule that is designated by rule as an infraction.

(c) Posting signs: Posting signs preventing hunting or fishing on any land not owned or leased by the person doing the posting, or without the permission of the person who owns, leases, or controls the land posted.

(d) Scientific permits: Using a scientific permit issued by the director for fish, shellfish, or wildlife, but not including big game or big game parts, and the person:

(i) Violates any terms or conditions of the scientific permit; or

(ii) Violates any department rule applicable to the issuance or use of scientific permits.

(e) Transporting aquatic plants: Transporting aquatic plants on any state or public road, including forest roads. However:

(i) This subsection does not apply to plants that are:

(A) Being transported to the department or to another destination designated by the director, in a manner designated by the department, for purposes of identifying a species or reporting the presence of a species;

(B) Legally obtained for aquarium use, wetland or lakeshore restoration, or ornamental purposes;

(C) Located within or on a commercial aquatic plant harvester that is being transported to a suitable location to remove aquatic plants;

(D) Being transported in a manner that prevents their unintentional dispersal, to a suitable location for disposal, research, or educational purposes; or

(E) Being transported in such a way as the commission may otherwise prescribe; and

(ii) This subsection does not apply to a person who:

(A) Is stopped at an aquatic invasive species check station and possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive plant species if that person complies with all department directives for the proper

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

decontamination of the watercraft and equipment; or

(B) Has voluntarily submitted a recreational or commercial watercraft for inspection by the department or its designee and has received a receipt verifying that the watercraft has not been contaminated since its last use.

Sec. 17. RCW 77.15.170 and 1999 c 258 s 5 are each amended to read as follows:

(1) A person is guilty of waste of fish and wildlife (~~in the second degree~~) if:

(a) ((The person kills, takes, or possesses fish, shellfish, or wildlife and the value of the fish, shellfish, or wildlife is greater than twenty dollars but less than two hundred fifty dollars; and

(b) The person recklessly allows such fish, shellfish, or wildlife to be wasted.

(2) A person is guilty of waste of fish and wildlife in the first degree if:

(a)) The person kills, takes, or possesses fish, shellfish, or wildlife having a value of two hundred fifty dollars or more or wildlife classified as big game; and

(b) The person recklessly allows such fish, shellfish, or wildlife to be wasted.

~~((3(a) Waste of fish and wildlife in the second degree is a misdemeanor.~~

~~((b)) (2) Waste of fish and wildlife (~~in the first degree~~) is a gross misdemeanor. Upon conviction, the department shall revoke any license or tag used in the crime and shall order suspension of the person's privileges to engage in the activity in which the person committed waste of fish and wildlife (~~in the first degree~~) for a period of one year.~~

~~((4)) (3) It is prima facie evidence of waste if:~~

(a) A processor purchases or engages a quantity of food fish, shellfish, or game fish that cannot be processed within sixty hours after the food fish, game fish, or shellfish are taken from the water, unless the food fish, game fish, or shellfish are preserved in good marketable condition; or

(b) A person brings a big game animal to a wildlife meat cutter and then abandons the animal. For purposes of this subsection (3)(b), a big game animal is deemed to be abandoned when its carcass is placed in the custody of a wildlife meat cutter for butchering and processing and:

(i) Having been placed in such custody for an unspecified period of time, the meat is not removed within thirty days after the wildlife meat cutter gives notice to the person who brought in the carcass or, having been so notified, the person who brought in the carcass refuses or fails to pay the agreed upon or reasonable charges for the butchering or processing of the carcass; or

(ii) Having been placed in such custody for a specified period of time, the meat is not removed at the end of the specified period or the person who brought in the carcass refuses to pay the agreed upon or reasonable charges for the butchering or processing of the carcass.

Sec. 18. RCW 77.15.190 and 1999 c 258 s 9 are each amended to read as follows:

(1) A person is guilty of unlawful trapping if the person:

(a) Sets out traps that are capable of taking wild animals, game animals, or furbearing mammals and does not possess all licenses, tags, or permits required under this title;

(b) Violates any department rule (~~of the commission or director~~) regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the trapping of wild animals, with the exception of reporting rules; or

(c) Fails to identify the owner of the traps or devices by neither (i) attaching a metal tag with the owner's department-assigned identification number or the name and address of the trapper legibly

written in numbers or letters not less than one-eighth inch in height nor (ii) inscribing into the metal of the trap such number or name and address.

(2) Unlawful trapping is a misdemeanor.

Sec. 19. RCW 77.15.240 and 1998 c 190 s 30 are each amended to read as follows:

(1) A person is guilty of unlawful use of dogs if the person:

(a) Negligently fails to prevent a dog under the person's control from pursuing, harassing, attacking, or (~~injuring~~) killing deer, elk, moose, caribou, mountain sheep, or (~~any~~) animals classified as endangered under this title; or

(b) Uses the dog to hunt deer or elk(, or

(c) During the closed season for a species of game animal or game bird, negligently fails to prevent the dog from pursuing such animal or destroying the nest of a game bird)).

(2) For purposes of this section, a dog is "under a person's control" if the dog is owned or possessed by, or in the custody of, a person.

(3) Unlawful use of dogs is a misdemeanor. (~~(A dog that is the basis for a violation of this section may be declared a public nuisance.)~~)

(4)(a) Based on a reasonable belief that a dog is pursuing, harassing, attacking, or killing a snow bound deer, elk, moose, caribou, mountain sheep, or animals classified as protected or endangered under this title, fish and wildlife officers and ex officio fish and wildlife officers may:

(i) Lawfully take a dog into custody; or

(ii) If necessary to avoid repeated harassment, injury, or death of wildlife under this section, destroy the dog.

(b) Fish and wildlife officers and ex officio fish and wildlife officers who destroy a dog pursuant to this section are immune from civil or criminal liability arising from their actions.

Sec. 20. RCW 77.15.260 and 2001 c 253 s 33 are each amended to read as follows:

(1) A person is guilty of unlawful trafficking in fish, shellfish, or wildlife in the second degree if the person traffics in fish, shellfish, or wildlife with a wholesale value of less than two hundred fifty dollars and:

(a) The fish or wildlife is classified as game, food fish, shellfish, game fish, or protected wildlife and the trafficking is not authorized by statute or department rule (~~of the department~~); or

(b) The fish, shellfish, or wildlife is unclassified and the trafficking violates any department rule (~~of the department~~).

(2)(a) A person is guilty of unlawful trafficking in fish, shellfish, or wildlife in the first degree if the person commits the act described by subsection (1) of this section and:

~~((a)) (i) The fish, shellfish, or wildlife has a value of two hundred fifty dollars or more; or~~

~~((b)) (ii) The fish, shellfish, or wildlife is designated as an endangered species or deleterious exotic wildlife and such trafficking is not authorized by any statute or department rule (~~of the department~~).~~

(b) For purposes of this subsection (2), whenever any series of transactions that constitute unlawful trafficking would, when considered separately, constitute unlawful trafficking in the second degree due to the value of the fish, shellfish, or wildlife, and the series of transactions are part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all the transactions considered when determining the degree of unlawful trafficking involved.

(3)(a) Unlawful trafficking in fish, shellfish, or wildlife in the second degree is a (~~gross misdemeanor~~) class C felony.

(b) Unlawful trafficking in fish, shellfish, or wildlife in the first degree is a class (~~C~~) B felony.

**Sec. 21.** RCW 77.15.280 and 2008 c 244 s 2 are each amended to read as follows:

(1) A person is guilty of violating rules requiring reporting of fish or wildlife harvest if the person:

(a) Fails to make a harvest log report of a commercial fish or shellfish catch in violation of any department rule (~~of the commission or the director~~); or

(b) (~~Fails to maintain a trapper's report or taxidermist ledger in violation of any rule of the commission or the director;~~

(c)) Fails to submit any portion of a big game animal for ((a required)) an inspection as required by department rule ((of the commission or the director; or

(d) Fails to return a catch record card to the department as required by rule of the commission or director, except for catch record cards officially endorsed for Puget Sound Dungeness crab).

(2) Violating rules requiring reporting of fish or wildlife harvest is a misdemeanor.

**Sec. 22.** RCW 77.15.290 and 2007 c 350 s 6 are each amended to read as follows:

(1) A person is guilty of unlawful transportation of fish or wildlife in the second degree if the person:

(a) Knowingly imports, moves within the state, or exports fish, shellfish, or wildlife in violation of any department rule (~~of the commission or the director~~) governing the transportation or movement of fish, shellfish, or wildlife and the transportation does not involve big game, endangered fish or wildlife, deleterious exotic wildlife, or fish, shellfish, or wildlife having a value greater than two hundred fifty dollars; or

(b) Possesses but fails to affix or notch a big game transport tag as required by department rule (~~of the commission or director~~).

(2) A person is guilty of unlawful transportation of fish or wildlife in the first degree if the person:

(a) Knowingly imports, moves within the state, or exports fish, shellfish, or wildlife in violation of any department rule (~~of the commission or the director~~) governing the transportation or movement of fish, shellfish, or wildlife and the transportation involves big game, endangered fish or wildlife, deleterious exotic wildlife, or fish, shellfish, or wildlife with a value of two hundred fifty dollars or more; or

(b) Knowingly transports shellfish, shellstock, or equipment used in commercial culturing, taking, handling, or processing shellfish without a permit required by authority of this title.

(3)(a) Unlawful transportation of fish or wildlife in the second degree is a misdemeanor.

(b) Unlawful transportation of fish or wildlife in the first degree is a gross misdemeanor.

(4) ((A person is guilty of unlawful transport of aquatic plants if the person transports aquatic plants on any state or public road, including forest roads, except as provided in this section.

(5) Unless otherwise prohibited by law, a person may transport aquatic plants:

(a) To the department, or to another destination designated by the director, in a manner designated by the department, for purposes of identifying a species or reporting the presence of a species;

(b) When legally obtained for aquarium use, wetland or lakeshore restoration, or ornamental purposes;

(c) When transporting a commercial aquatic plant harvester to a suitable location for purposes of removing aquatic plants;

(d) In a manner that prevents their unintentional dispersal, to a suitable location for disposal, research, or educational purposes; or

(e) As the commission may otherwise prescribe.

(6) Unlawful transport of aquatic plants is a misdemeanor.

(7)) This section does not apply to: (a) Any person stopped at an aquatic invasive species check station who possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive species if that person complies with all department

directives for the proper decontamination of the watercraft and equipment; or (b) any person who has voluntarily submitted a recreational or commercial watercraft for inspection by the department or its designee and has received a receipt verifying that the watercraft has not been contaminated since its last use.

**Sec. 23.** RCW 77.15.370 and 2009 c 333 s 17 are each amended to read as follows:

(1) A person is guilty of unlawful recreational fishing in the first degree if:

(a) The person takes, possesses, or retains two times or more than the bag limit or possession limit of fish or shellfish allowed by any rule of the director or commission setting the amount of food fish, game fish, or shellfish that can be taken, possessed, or retained for noncommercial use;

(b) The person fishes in a fishway;

(c) The person shoots, gaffs, snags, snares, spears, dipnets, or stoness fish or shellfish in state waters, or possesses fish or shellfish taken by such means, unless such means are authorized by express department rule (~~of the commission or director~~);

(d) The person fishes for or possesses a fish listed as threatened or endangered in 50 C.F.R. Sec. ((47.11(2002))) 223.102 (2006) or Sec. 224.101 (2010), unless fishing for or possession of such fish is specifically allowed under federal or state law; ((~~or~~))

(e) The person possesses a sturgeon measuring in excess of the maximum size limit as established by rules adopted by the department; or

(f) The person possesses a salmon or steelhead during a season closed for that species.

(2) Unlawful recreational fishing in the first degree is a gross misdemeanor.

**Sec. 24.** RCW 77.15.380 and 2010 c 193 s 5 are each amended to read as follows:

(1) A person is guilty of unlawful recreational fishing in the second degree if the person fishes for(;) fish or shellfish and, whether or not the person possesses fish or shellfish, the person has not purchased the appropriate fishing or shellfishing license and catch record card issued to Washington residents or nonresidents under chapter 77.32 RCW.

(2) A person is guilty of unlawful recreational fishing in the second degree if the person takes, possesses, or harvests fish or shellfish and:

(a) The person owns, but does not have ((and possess)) in the person's possession, the license or the catch record card required by chapter 77.32 RCW for such activity; or

(b) The action violates any department rule (~~of the commission or the director~~) regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas, closed times, or any other rule addressing the manner or method of fishing or possession of fish(~~, except for~~). This section does not apply to use of a net to take fish ((as provided for in)) under RCW 77.15.580 ((and)) or the unlawful use of shellfish gear for personal use ((as provided in)) under RCW 77.15.382.

((~~2~~)) (3) Unlawful recreational fishing in the second degree is a misdemeanor.

**Sec. 25.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person ((does not have and possess the license required by chapter 77.32 RCW for taking seaweed)) has not purchased a personal use shellfish and seaweed license issued to Washington residents or nonresidents under chapter 77.32 RCW; or

(b) The ((action violates any rule of the department or the department of natural resources regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting)) person

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

takes, possesses, or harvests seaweed in an amount that is two times or more of the daily possession limit of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**Sec. 26.** RCW 77.15.400 and 2006 c 148 s 1 are each amended to read as follows:

(1) A person is guilty of unlawful hunting of wild birds in the second degree if the person hunts for wild birds and, whether or not the person possesses wild birds, the person has not purchased the appropriate hunting license issued to Washington residents or nonresidents under chapter 77.32 RCW.

(2) A person is guilty of unlawful hunting of wild birds in the second degree if the person takes or possesses less than two times the bag or possession limit of wild birds and the person:

(a) ~~((Hunts for, takes, or possesses a wild bird and the person does not have and possess))~~ Owns, but does not have in the person's possession, all licenses, tags, stamps, and permits required under this title; or

(b) ~~((Maliciously destroys, takes, or harms the eggs or nests of a wild bird except when authorized by permit;~~

(c) ~~((Violates any department rule (of the commission or director) regarding seasons, bag or possession limits (but less than two times the bag or possession limit), closed areas, closed times, or (other rule addressing) the manner or method of hunting or possession of wild birds(;~~ or

(d) ~~((Possesses a wild bird taken during a closed season for that wild bird or taken from a closed area for that wild bird)).~~

~~((2))~~ (3) A person is guilty of unlawful hunting of wild birds in the first degree if the person takes or possesses two times or more than the possession or bag limit for wild birds allowed by department rule ~~((of the commission or director)).~~

~~((3))~~ (4)(a) Unlawful hunting of wild birds in the second degree is a misdemeanor.

(b) Unlawful hunting of wild birds in the first degree is a gross misdemeanor.

~~((4))~~ (5) In addition to the penalties set forth in this section, if a person, other than a youth as defined in RCW 77.08.010 for hunting purposes, violates a department rule ~~((adopted by the commission under the authority of this title))~~ that requires the use of nontoxic shot, upon conviction:

(a) The court shall require a payment of one thousand dollars as a criminal wildlife penalty assessment that must be paid to the clerk of the court and distributed to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425. The criminal wildlife penalty assessment must be imposed regardless of and in addition to any sentence, fine, or costs imposed for violating this section. The criminal wildlife penalty assessment must be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect; and

(b) The department shall revoke the hunting license of the person and order a suspension of small game hunting privileges for two years.

**Sec. 27.** RCW 77.15.410 and 2011 c 133 s 1 are each amended to read as follows:

(1) A person is guilty of unlawful hunting of big game in the second degree if the person:

(a) Hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under this title; or

(b) Violates any department rule ~~((of the commission or director))~~ regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game~~((;~~

~~((e) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game)).~~

(2) A person is guilty of unlawful hunting of big game in the first degree if the person commits the act described in subsection (1) of this section and:

(a) The person hunts for, takes, or possesses three or more big game animals within the same course of events; or

(b) The act occurs within five years of the date of a prior conviction under this title involving unlawful hunting, killing, possessing, or taking big game.

(3)(a) Unlawful hunting of big game in the second degree is a gross misdemeanor. Upon conviction of an offense involving killing or possession of big game taken during a closed season, closed area, ~~((or taken))~~ without the proper license, tag, or permit using an unlawful method, or in excess of the bag or possession limit, the department shall revoke all of the person's hunting licenses and tags and order a suspension of the person's hunting privileges for two years.

(b) Unlawful hunting of big game in the first degree is a class C felony. Upon conviction, the department shall revoke all of the person's hunting licenses or tags and order the person's hunting privileges suspended for ten years.

(4) For the purposes of this section, "same course of events" means within one twenty-four hour period, or a pattern of conduct composed of a series of acts that are unlawful under subsection (1) of this section, over a period of time evidencing a continuity of purpose.

**Sec. 28.** RCW 77.15.430 and 1999 c 258 s 4 are each amended to read as follows:

(1) A person is guilty of unlawful hunting of wild animals in the second degree if the person hunts for wild animals not classified as big game and, whether or not the person possesses the wild animals, the person has not purchased the appropriate hunting license issued to Washington residents or nonresidents under chapter 77.32 RCW.

(2) A person is guilty of unlawful hunting of wild animals in the second degree if the person:

(a) ~~((Hunts for,))~~ Takes(; or possesses a wild animal that is not classified as big game, and owns, but does not have ~~((and possess))~~ in the person's possession, all licenses, tags, or permits required by this title; or

(b) Violates any department rule ~~((of the commission or director))~~ regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas including game reserves, closed times, or any other rule addressing the manner or method of hunting or possession of wild animals not classified as big game~~((;~~

~~((e) Possesses a wild animal that is not classified as big game taken during a closed season for that wild animal or from a closed area for that wild animal)).~~

~~((2))~~ (3) A person is guilty of unlawful hunting of wild animals in the first degree if the person takes or possesses two times or more than the possession or bag limit for wild animals that are not classified as big game animals as allowed by department rule ~~((of the commission or director)).~~

~~((3))~~ (4)(a) Unlawful hunting of wild animals in the second degree is a misdemeanor.

(b) Unlawful hunting of wild animals in the first degree is a gross misdemeanor.

**Sec. 29.** RCW 77.15.460 and 1999 c 258 s 7 are each amended to read as follows:

(1) A person is guilty of unlawful possession of a loaded ~~((firearm in a motor vehicle))~~ rifle or shotgun in a motor vehicle, as defined in RCW 46.04.320, or upon an off-road vehicle, as defined in RCW 46.04.365, if:

(a) The person carries, transports, conveys, possesses, or controls a rifle or shotgun in ~~((or on))~~ a motor vehicle, or upon an off-road vehicle, except as allowed by department rule; and

(b) The rifle or shotgun contains shells or cartridges in the magazine or chamber, or is a muzzle-loading firearm that is loaded and capped or primed.

(2) A person is guilty of unlawful use of a loaded firearm if:

~~(a) The person negligently ((shoots)) discharges~~ a firearm from, across, or along the maintained portion of a public highway; or

~~(b) The person discharges a firearm from within a moving motor vehicle or from upon a moving off-road vehicle.~~

(3) Unlawful possession of a loaded ~~((firearm in))~~ rifle or shotgun in a motor vehicle or upon an off-road vehicle, and unlawful use of a loaded firearm ~~((is a))~~ are misdemeanors.

(4) This section does not apply if the person:

(a) Is a law enforcement officer who is authorized to carry a firearm and is on duty within the officer's respective jurisdiction;

(b) Possesses a disabled hunter's permit as provided by RCW 77.32.237 and complies with all rules of the department concerning hunting by persons with disabilities; or

~~(c) Discharges the rifle or shotgun from upon a nonmoving motor vehicle or a nonmoving off-road vehicle, as long as the engine is turned off and the motor vehicle or off-road vehicle is not parked on or beside the maintained portion of a public road, except as authorized by the commission by rule.~~

(5) For purposes of subsection (1) of this section, a ~~((firearm))~~ rifle or shotgun shall not be considered loaded if the detachable clip or magazine is not inserted in or attached to the ~~((firearm))~~ rifle or shotgun.

**Sec. 30.** RCW 77.15.610 and 2009 c 333 s 5 are each amended to read as follows:

(1) A person who holds a fur ~~((buyer's))~~ dealer's license or taxidermy license is guilty of unlawful use of a commercial wildlife license if the person ~~((~~

~~(a)) fails to purchase and have in the ((license in)) person's possession the required license while engaged in fur buying or practicing taxidermy for commercial purposes((; or~~

~~(b) Violates any rule of the department regarding reporting requirements or the use, possession, display, or presentation of the taxidermy or fur buyer's license)).~~

(2) Unlawful use of a commercial wildlife license is a misdemeanor.

**Sec. 31.** RCW 77.15.620 and 2009 c 333 s 20 are each amended to read as follows:

(1) A person is guilty of engaging in fish dealing activity without a license in the second degree if the person:

(a) Engages in the commercial processing of fish or shellfish, including custom canning or processing of personal use fish or shellfish and does not hold a wholesale dealer's license required by RCW 77.65.280(1) or 77.65.480 for anadromous game fish, or a direct retail endorsement under RCW 77.65.510;

(b) Engages in the wholesale selling, buying, or brokering of food fish or shellfish and does not hold a wholesale dealer's or buying license required by RCW 77.65.280(2) or 77.65.480 for anadromous game fish;

(c) Is a fisher who lands and sells his or her catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state and does not hold a direct retail endorsement required by RCW 77.65.510; or

(d) Engages in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other by-products from food fish or shellfish and does not hold a wholesale dealer's license required by RCW 77.65.280(4) or 77.65.480 for anadromous game fish.

(2) ~~((Engaging in fish dealing activity without a license in the second degree is a gross misdemeanor.~~

~~(3)) A person is guilty of engaging in fish dealing activity without a license in the first degree if the person commits the act described by subsection (1) of this section and the violation involves~~((; (a))~~ fish or shellfish worth two hundred fifty dollars or more~~((; (b) a failure to document such fish or shellfish with a fish receiving ticket or other documentation required by statute or rule of the department; or (c) violates [a violation of] any other rule of the department regarding wholesale fish buying and dealing)).~~~~

(3)(a) Engaging in fish dealing activity without a license in the second degree is a gross misdemeanor.

(b) Engaging in fish dealing activity without a license in the first degree is a class C felony.

**Sec. 32.** RCW 77.15.630 and 2000 c 107 s 254 are each amended to read as follows:

(1) A person who ~~((holds a fish dealer's license required by RCW 77.65.280, an anadromous game fish buyer's license required by RCW 77.65.480, or a fish buyer's license required by RCW 77.65.340 is guilty of unlawful use of fish buying and dealing licenses))~~ acts in the capacity of a wholesale fish dealer, anadromous game fish buyer, or a fish buyer is guilty of unlawful fish and shellfish catch accounting in the second degree if the person:

(a) Possesses or receives fish or shellfish for commercial purposes worth less than two hundred fifty dollars; and

(b) Fails to document such fish or shellfish with a fish-receiving ticket or other documentation required by statute or department rule ~~((of the department)); or~~

(c) Fails to sign the fish receiving ticket or other required documentation, fails to provide all of the information required by statute or department rule on the fish receiving ticket or other documentation, or both.

(2) A person is guilty of unlawful ~~((use of fish buying and dealing licenses))~~ fish and shellfish catch accounting in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The violation involves fish or shellfish worth two hundred fifty dollars or more;

(b) The person acted with knowledge that the fish or shellfish were taken from a closed area, at a closed time, or by a person not licensed to take such fish or shellfish for commercial purposes; or

(c) The person acted with knowledge that the fish or shellfish were taken in violation of any tribal law.

(3)(a) Unlawful ~~((use of fish buying and dealing licenses))~~ fish and shellfish catch accounting in the second degree is a gross misdemeanor.

(b) Unlawful ~~((use of fish buying and dealing licenses))~~ fish and shellfish catch accounting in the first degree is a class C felony. Upon conviction, the department shall suspend all privileges to engage in fish buying or dealing for two years.

**Sec. 33.** RCW 77.15.640 and 2002 c 301 s 8 are each amended to read as follows:

(1) A person who holds a wholesale fish dealer's license required by RCW 77.65.280, an anadromous game fish buyer's license required by RCW 77.65.480, a fish buyer's license required by RCW 77.65.340, or a direct retail endorsement under RCW 77.65.510 is guilty of ~~((violating rules governing))~~ unlawful wholesale fish buying and dealing if the person:

(a) Fails to possess or display his or her license when engaged in any act requiring the license; or

(b) Fails to display or uses the license in violation of any department rule ~~((of the department);~~

(c) Files a signed fish-receiving ticket but fails to provide all information required by rule of the department; or

(d) Violates any other rule of the department regarding wholesale fish buying and dealing).

(2) ~~((Violating rules governing))~~ Unlawful wholesale fish buying and dealing is a gross misdemeanor.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

**Sec. 34.** RCW 77.15.650 and 2008 c 10 s 2 are each amended to read as follows:

(1) A person is guilty of unlawful purchase or use of a license in the second degree if the person buys, holds, uses, displays, transfers, or obtains any license, tag, permit, or approval required by this title and the person:

(a) Uses false information to buy, hold, use, display, or obtain a license, permit, tag, or approval;

(b) Acquires, holds, or buys in excess of one license, permit, or tag for a license year if only one license, permit, or tag is allowed per license year;

(c) Except as authorized under RCW 77.32.565, uses or displays a license, permit, tag, or approval that was issued to another person;

(d) Except as authorized under RCW 77.32.565, permits or allows a license, permit, tag, or approval to be used or displayed by another person not named on the license, permit, tag, or approval;

(e) Acquires or holds a license while privileges for the license are revoked or suspended;

(f) Holds a resident license from another state or country. This subsection (1)(f) only applies if the Washington license, tag, permit, or approval that the person buys, holds, uses, displays, transfers, or obtains is a resident license. It is prima facie evidence of a violation of this section if any person who has a resident license from another state or country purchases a resident license, tag, permit, or approval in Washington. This subsection does not apply to individuals who meet the definition of "resident" in section 5(2), (3), and (4) of this act.

(2) A person is guilty of unlawful purchase or use of a license in the first degree if the person commits the act described by subsection (1) of this section and the person was acting with intent that the license, permit, tag, or approval be used for any commercial purpose. A person is presumed to be acting with such intent if the violation involved obtaining, holding, displaying, or using a license or permit for participation in any commercial fishery issued under this title or a license authorizing fish or wildlife buying, trafficking, or wholesaling.

(3)(a) Unlawful purchase or use of a license in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke any unlawfully used or held licenses and order a two-year suspension of participation in the activities for which the person unlawfully obtained, held, or used a license, permit, tag, or approval.

(b) Unlawful purchase or use of a license in the first degree is a class C felony. Upon conviction, the department shall revoke any unlawfully used or held licenses and order a five-year suspension of participation in any activities for which the person unlawfully obtained, held, or used a license, permit, tag, or approval.

(4) For purposes of this section, a person "uses" a license, permit, tag, or approval if the person engages in any activity authorized by the license, permit, tag, or approval held or possessed by the person. Such uses include but are not limited to fishing, hunting, taking, trapping, delivery or landing fish or wildlife, and selling, buying, or wholesaling of fish or wildlife.

(5) Any license obtained in violation of this section is void upon issuance and is of no legal effect.

**Sec. 35.** RCW 77.15.660 and 1998 c 190 s 55 are each amended to read as follows:

(1) A person is guilty of unlawful use of a scientific permit if the permit issued by the director is for big game or big game parts, and the person:

(a) Violates any terms or conditions of ~~((a))~~ the scientific permit ~~((issued by the director))~~;

(b) Buys or sells ~~((fish or wildlife taken))~~ big game or big game parts that were taken or acquired with a scientific permit; or

(c) Violates any department rule ~~((of the commission or the director))~~ applicable to the issuance or use of scientific permits.

(2) Unlawful use of a scientific permit is a gross misdemeanor.

**Sec. 36.** RCW 77.15.700 and 2009 c 333 s 2 are each amended to read as follows:

(1) The department shall ~~((impose revocation and suspension of))~~ revoke a person's recreational license or licenses and suspend a person's recreational license privileges in the following circumstances:

(a) Upon conviction, if directed by statute for an offense.

(b) Upon conviction ~~((of a violation not involving commercial fishing))~~, failure to appear at a hearing to contest an infraction or criminal charge, or an unvacated payment of a fine or a finding of committed as a final disposition for any infraction, if the department finds that actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife. Suspension of privileges under this subsection may be permanent.

(c) If a person is convicted, fails to appear at a hearing to contest an infraction or criminal citation, or has an unvacated payment of a fine or a finding of committed as a final disposition for any infraction, twice within ten years for a violation involving unlawful hunting, killing, or possessing big game. Revocation and suspension under this subsection must be ordered for all hunting privileges for two years.

(d) If a person violates, three times or more in a ten-year period, recreational hunting or fishing laws or rules for which the person: (i) Is convicted of an offense; (ii) has an ~~((uncontested notice of))~~ unvacated payment of a fine or a finding of committed as a final disposition for any infraction; or (iii) fails to appear at a hearing to contest ~~((a fish and wildlife infraction; or (iv) is found to have committed))~~ an infraction or a criminal citation. Revocation and suspension under this subsection must be ordered for all recreational hunting and fishing privileges for two years.

(2)(a) A violation punishable as an infraction counts towards the revocation and suspension of recreational hunting and fishing privileges under this section if that violation is:

(i) Punishable as a crime on July 24, 2005, and is subsequently decriminalized; or

(ii) One of the following violations, as they exist on July 24, 2005: RCW 77.15.160; WAC 220-56-116; WAC 220-56-315(11); or WAC 220-56-355 (1) through (4).

(b) The commission may, by rule, designate infractions that do not count towards the revocation and suspension of recreational hunting and fishing privileges.

(3) If either the deferred education licensee or the required nondeferred accompanying person, hunting under the authority of RCW 77.32.155(2), is convicted of a violation of this title, fails to appear at a hearing to contest a fish and wildlife infraction or a criminal citation, or has an unvacated payment of a fine or a finding of committed as a final disposition for any fish and wildlife infraction, except for a violation of RCW 77.15.400 (1) through ~~((3))~~ (4), the department may revoke all hunting licenses and tags and may order a suspension of either or both the deferred education licensee's and the nondeferred accompanying person's hunting privileges for one year.

(4) A person who has a recreational license revoked and privileges suspended under this section may file an appeal with the department pursuant to chapter 34.05 RCW. An appeal must be filed within twenty days of notice of license revocation and privilege suspension. If an appeal is filed, the revocation and suspension issued by the department do not take effect until twenty-one days after the department has delivered an opinion. If no appeal is filed within twenty days of notice of license revocation and suspension, the right to an appeal is waived, and the revocation and suspension take effect twenty-one days following the notice of revocation and

suspension.

(5) A recreational license revoked and privilege suspended under this section is in addition to the statutory penalties assigned to the underlying violation.

**Sec. 37.** RCW 77.15.720 and 2000 c 107 s 258 are each amended to read as follows:

(1)(a) If a person (~~(shoots)~~) discharges a firearm, bow, or crossbow while hunting and in a manner that injures, or that a reasonable person would believe is likely to injure, another person (~~(or domestic livestock while hunting)~~), the director shall revoke all of the shooter's hunting licenses and suspend all hunting privileges for three years. If the shooting (~~(of another person or livestock is the result of criminal negligence or reckless or intentional conduct, then the person's)~~) kills or results in the death of another person, then the director shall revoke all of the shooter's hunting licenses and suspend all of the person's hunting privileges (~~(shall be suspended)~~) for ten years. (~~The~~)

(b) If a person, with malice, discharges a firearm, bow, or crossbow while hunting and in a manner that kills or causes substantial bodily harm to livestock belonging to another person, the director shall revoke all of the shooter's hunting licenses and suspend all hunting privileges for three years. For the purposes of this subsection (1)(b), "malice" has the same meaning as provided in RCW 9A.04.110 but applies to acts against livestock.

(2) A suspension under subsection (1) of this section shall be continued beyond (~~these~~) the applicable periods if damages owed to the victim or livestock owner have not been paid by the suspended person. (~~A~~) In such a case, no hunting license shall (~~not~~) be reissued to the suspended person unless authorized by the director.

((2)) Within twenty days of service of an order suspending privileges or imposing conditions under this section or RCW 77.15.710, a person may petition for administrative review under chapter 34.05 RCW by serving the director with a petition for review. The order is final and unappealable if there is no timely petition for administrative review.)) (3) A person who is notified of a license revocation under this section may request an appeal hearing under chapter 34.05 RCW.

((3)) (4) The commission may by rule authorize petitions for reinstatement of administrative suspensions and define circumstances under which such a reinstatement will be allowed.

**Sec. 38.** RCW 77.15.740 and 2008 c 225 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it is unlawful to:

(a) ((Approach, by any means, within three hundred feet of a southern resident orca whale (*Orcinus orca*);

(b) Cause a vessel or other object to approach within three hundred feet of a southern resident orca whale;

(c) Intercept a southern resident orca whale. A person intercepts a southern resident orca whale when that person places a vessel or allows a vessel to remain in the path of a whale and the whale approaches within three hundred feet of that vessel;

(d) Fail to disengage the transmission of a vessel that is within three hundred feet of a southern resident orca whale, for which the vessel operator is strictly liable; or

(e) Feed a southern resident orca whale, for which any person feeding a southern resident orca whale is strictly liable.

(2) A person is exempt from subsection (1) of this section where:

(a) A reasonably prudent person in that person's position would determine that compliance with the requirements of subsection (1) of this section will threaten the safety of the vessel, the vessel's crew or passengers, or is not feasible due to vessel design limitations, or because the vessel is restricted in its ability to maneuver due to wind, current, tide, or weather;

(b) That person is lawfully participating in a commercial fishery and is engaged in actively setting, retrieving, or closely tending commercial fishing gear;

(c) That person is acting in the course of official duty for a state, federal, tribal, or local government agency; or

(d) That person is acting pursuant to and consistent with authorization from a state or federal government agency.

(3) Nothing in this section is intended to conflict with existing rules regarding safe operation of a vessel or vessel navigation rules.

(4)) Cause a vessel or other object to approach, in any manner, within two hundred yards of a southern resident orca whale;

(b) Position a vessel to be in the path of a southern resident orca whale at any point located within four hundred yards of the whale. This includes intercepting a southern resident orca whale by positioning a vessel so that the prevailing wind or water current carries the vessel into the path of the whale at any point located within four hundred yards of the whale;

(c) Fail to disengage the transmission of a vessel that is within two hundred yards of a southern resident orca whale; or

(d) Feed a southern resident orca whale.

(2) A person is exempt from subsection (1) of this section if that person is:

(a) Operating a federal government vessel in the course of his or her official duties, or operating a state, tribal, or local government vessel when engaged in official duties involving law enforcement, search and rescue, or public safety;

(b) Operating a vessel in conjunction with a vessel traffic service established under 33 C.F.R. and following a traffic separation scheme, or complying with a vessel traffic service measure of direction. This also includes support vessels escorting ships in the traffic lanes, such as tug boats;

(c) Engaging in an activity, including scientific research, pursuant to a permit or other authorization from the national marine fisheries service and the department;

(d) Lawfully engaging in a treaty Indian or commercial fishery that is actively setting, retrieving, or closely tending fishing gear;

(e) Conducting vessel operations necessary to avoid an imminent and serious threat to a person, vessel, or the environment, including when necessary for overall safety of navigation and to comply with state and federal navigation requirements; or

(f) Engaging in rescue or clean-up efforts of a beached southern resident orca whale overseen, coordinated, or authorized by a volunteer stranding network.

(3) For the purpose of this section, "vessel" includes aircraft, canoes, fishing vessels, kayaks, personal watercraft, rafts, recreational vessels, tour boats, whale watching boats, vessels engaged in whale watching activities, or other small craft including power boats and sailboats.

((5)) (4)(a) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW.

(b) A person who qualifies for an exemption under subsection (2) of this section may offer that exemption as an affirmative defense, which that person must prove by a preponderance of the evidence.

**NEW SECTION. Sec. 39.** A new section is added to chapter 77.15 RCW to read as follows:

(1) A person may not negligently feed or attempt to feed large wild carnivores or negligently attract large wild carnivores to land or a building.

(2) If a fish and wildlife officer, ex officio fish and wildlife officer, or animal control authority, as defined in RCW 16.30.010, has probable cause to believe that a person is negligently feeding, attempting to feed, or attracting large wild carnivores to land or a building by placing or locating food, food waste, or other substance in, on, or about any land or building, and the food, food waste, or other substance poses a risk to the safety of any person, livestock, or pet because it is attracting or could attract large wild carnivores to

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

the land or building, that person commits an infraction under chapter 7.84 RCW.

(3) Subsection (2) of this section does not apply to:

(a) A person who is engaging in forest practices in accordance with chapter 76.09 RCW or in hunting or trapping wildlife in accordance with all other applicable provisions of this title or rules of the commission or the director;

(b) A person who is engaging in a farming or ranching operation that is using generally accepted farming or ranching practices consistent with Titles 15 and 16 RCW;

(c) Waste disposal facilities that are operating in accordance with applicable federal, state, and municipal laws;

(d) Entities listed in RCW 16.30.020(1) (a) through (j) and scientific collection permit holders; or

(e) A fish and wildlife officer or employee or agent of the department operating under the authority of or upon request from an officer conducting authorized wildlife capture activities to address a threat to human safety or a wildlife interaction as defined in RCW 77.36.010.

(4) For persons and entities listed in subsection (3) of this section, a fish and wildlife officer, ex officio fish and wildlife officer, or animal control authority, as defined in RCW 16.30.010, may issue a written warning to the person or entity if:

(a) The officer or animal control authority can articulate facts to support that the person or entity has placed or is responsible for placing food, food waste, or other substance in, on, or about the person's or entity's land or buildings; and

(b) The food, food waste, or other substance poses a risk to the safety of any person, livestock, or pet because the food, food waste, or other substance is attracting or could attract large wild carnivores to the land or buildings.

(5)(a) Any written warning issued under subsection (4) of this section requires the person or entity placing or otherwise responsible for placing the food, food waste, or other substance to contain, move, or remove that food, food waste, or other substance within two days.

(b) If a person who is issued a written warning under (a) of this subsection fails to contain, move, or remove the food, food waste, or other substance as directed, the person commits an infraction under chapter 7.84 RCW.

**NEW SECTION. Sec. 40.** A new section is added to chapter 77.15 RCW to read as follows:

(1) A person may not intentionally feed or attempt to feed large wild carnivores or intentionally attract large wild carnivores to land or a building.

(2) A person who intentionally feeds, attempts to feed, or attracts large wild carnivores to land or a building is guilty of a misdemeanor.

(3) A person who is issued an infraction under section 39 of this act for negligently feeding, attempting to feed, or attracting large wild carnivores to land or a building, and who fails to contain, move, or remove the food, food waste, or other substance within twenty-four hours of being issued the infraction, is guilty of a misdemeanor.

**NEW SECTION. Sec. 41.** The following acts or parts of acts are each repealed:

(1) RCW 77.12.315 (Dogs harassing deer and elk--Declaration of emergency--Taking dogs into custody or destroying--Immunity) and 2000 c 107 s 221, 1987 c 506 s 40, 1980 c 78 s 49, & 1971 ex.s. c 183 s 1;

(2) RCW 77.15.140 (Unclassified fish or wildlife--Unlawful taking--Penalty) and 1998 c 190 s 15;

(3) RCW 77.15.220 (Unlawful posting--Penalty) and 1998 c 190 s 25; and

(4) RCW 77.15.330 (Unlawful hunting or fishing contests--Penalty) and 2001 c 253 s 36 & 1998 c 190 s 56.

**NEW SECTION. Sec. 42.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Ranker moved that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6135 and ask the House to recede therefrom.

The President declared the question before the Senate to be the motion by Senator Ranker that the Senate refuse to concur in the House amendment(s) to Substitute Senate Bill No. 6135 and ask the House to recede therefrom.

The motion by Senator Ranker carried and the Senate refused to concur in the House amendment(s) to Substitute Senate Bill No. 6135 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

March 1, 2012

MR. PRESIDENT:

The House passed ENGROSSED SUBSTITUTE SENATE BILL NO. 6555 with the following amendment(s): 6555-S.E AMH ENGR H4436.E

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 26.44.020 and 2010 c 176 s 1 are each reenacted and amended to read as follows:

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

(1) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Child" or "children" means any person under the age of eighteen years of age.

(3) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(4) "Child protective services section" means the child protective services section of the department.

(5) "Children's advocacy center" means a child-focused facility in good standing with the state chapter for children's advocacy

centers and that coordinates a multidisciplinary process for the investigation, prosecution, and treatment of sexual and other types of child abuse. Children's advocacy centers provide a location for forensic interviews and coordinate access to services such as, but not limited to, medical evaluations, advocacy, therapy, and case review by multidisciplinary teams within the context of county protocols as defined in RCW 26.44.180 and 26.44.185.

(6) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Court" means the superior court of the state of Washington, juvenile department.

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

(9) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(10) "Family assessment response" means a way of responding to certain reports of child abuse or neglect made under this chapter using a differential response approach to child protective services. The family assessment response shall focus on the safety of the child, the integrity and preservation of the family, and shall assess the status of the child and the family in terms of risk of abuse and neglect including the parent's or guardian's or other caretaker's capacity and willingness to protect the child and, if necessary, plan and arrange the provision of services to reduce the risk and otherwise support the family. No one is named as a perpetrator, and no investigative finding is entered in the record as a result of a family assessment.

(11) "Founded" means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

~~((10))~~ (12) "Inconclusive" means the determination following an investigation by the department, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

~~((11))~~ (13) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

~~((12))~~ (14) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

~~((13))~~ (15) "Malice" or "maliciously" means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

~~((14))~~ (16) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against

someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

~~((15))~~ (17) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

~~((16))~~ (18) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

~~((17))~~ (19) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

~~((18))~~ (20) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

~~((19))~~ (21) "Screened-out report" means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

~~((20))~~ (22) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

~~((21))~~ (23) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

~~((22))~~ (24) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

~~((23))~~ (25) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

~~((24))~~ (26) "Unfounded" means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

NEW SECTION. **Sec. 2.** A new section is added to chapter 26.44 RCW to read as follows:

(1) No later than December 1, 2013, the department shall implement the family assessment response. The department may implement the family assessment response on a phased-in basis, by geographical area.

(2) The department shall develop an implementation plan in consultation with stakeholders, including tribes. The department shall submit a report of the implementation plan to the appropriate committees of the legislature by December 31, 2012. At a minimum, the following must be developed before implementation and included in the report to the legislature:

(a) Description of the family assessment response practice model;

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(b) Identification of possible additional noninvestigative responses or pathways;

(c) Development of an intake screening tool and a family assessment tool specifically to be used in the family assessment response. The family assessment tool must, at minimum, evaluate the safety of the child and determine services needed by the family to improve or restore family well-being;

(d) Delineation of staff training requirements;

(e) Development of strategies to reduce disproportionality;

(f) Development of strategies to assist and connect families with the appropriate private or public housing support agencies, for those parents whose inability to obtain or maintain safe housing creates a risk of harm to the child, risk of out-of-home placement of the child, or a barrier to reunification;

(g) Identification of methods to involve local community partners in the development of community-based resources to meet families' needs. Local community partners may include, but are not limited to: Alumni of the foster care system and veteran parents, local private service delivery agencies, schools, local health departments and other health care providers, juvenile court, law enforcement, office of public defense social workers or local defense attorneys, domestic violence victims advocates, and other available community-based entities;

(h) Delineation of procedures to assure continuous quality assurance;

(i) Identification of current departmental expenditures for services appropriate for the family assessment response, to the greatest practicable extent;

(j) Identification of philanthropic funding and other private funding available to supplement public resources in response to identified family needs;

(k) Development of effective mechanisms which assure and maximize, to the greatest extent practicable, that family assessment response for Native American Indian children will be completed in a timely manner by a worker from the child's tribe or by a worker approved by the child's tribe;

(l) A potential phase-in schedule if proposed; and

(m) Recommendations for legislative action required to implement the plan.

**Sec. 3.** RCW 26.44.030 and 2009 c 480 s 1 are each amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when

he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an

oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) Upon receiving a report of alleged abuse or neglect, the department shall use one of the following discrete responses to reports of child abuse or neglect that are screened in and accepted for departmental response:

(i) Investigation; or

(ii) Family assessment.

(b) In making the response in (a) of this subsection the department shall:

(i) Use a method by which to assign cases to investigation or family assessment which are based on an array of factors that may include the presence of: Imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim. Age of the alleged victim shall not be used as the sole criterion for determining case assignment;

(ii) Allow for a change in response assignment based on new information that alters risk or safety level;

(iii) Allow families assigned to family assessment to choose to receive an investigation rather than a family assessment;

(iv) Provide a full investigation if a family refuses the initial family assessment;

(v) Provide voluntary services to families based on the results of the initial family assessment. If a family refuses voluntary services, and the department cannot identify specific facts related to risk or safety that warrant assignment to investigation under this chapter, and there is not a history of reports of child abuse or neglect related to the family, then the department must close the family assessment response case. However, if at any time the department identifies risk or safety factors that warrant an investigation under this chapter, then the family assessment response case must be reassigned to investigation;

(vi) Conduct an investigation, and not a family assessment, in response to an allegation that, the department determines based on the intake assessment:

(A) Poses a risk of "imminent harm" consistent with the definition provided in RCW 13.34.050, which includes, but is not limited to, sexual abuse and sexual exploitation as defined in this chapter;

(B) Poses a serious threat of substantial harm to a child;

(C) Constitutes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim;

(D) The child is an abandoned child as defined in RCW 13.34.030;

(E) The child is an adjudicated dependent child as defined in RCW 13.34.030, or the child is in a facility that is licensed, operated, or certified for care of children by the department under chapter 74.15 RCW, or by the department of early learning.

(c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its officers, agents, or employees acted with reckless disregard.

(12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

~~((12))~~ (13) For reports of alleged abuse or neglect that are responded to through family assessment response, the department shall:

(a) Provide the family with a written explanation of the procedure for assessment of the child and the family and its purposes;

(b) Collaborate with the family to identify family strengths, resources, and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to ninety days;

(d) Offer services to the family in a manner that makes it clear that acceptance of the services is voluntary;

(e) Implement the family assessment response in a consistent and cooperative manner;

(f) Have the parent or guardian sign an agreement to participate in services before services are initiated that informs the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not sign the consent form.

(14) In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency:

(a) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(b) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

~~((13))~~ (15) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombudsman of the contents of the report. The department shall also notify the ombudsman of the disposition of the report.

~~((14))~~ (16) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

~~((15))~~ (17)(a) The department shall maintain investigation records and conduct timely and periodic reviews of all founded

cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(b) In the family assessment response, the department shall not make a finding as to whether child abuse or neglect occurred. No one shall be named as a perpetrator and no investigative finding shall be entered in the department's child abuse or neglect database.

~~((16))~~ (18) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. ~~((The department shall, within funds appropriated for this purpose, offer enhanced community based services to persons who are determined not to require further state intervention.~~

~~((17))~~ (19) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

~~((18))~~ (20) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030.

**Sec. 4.** RCW 26.44.031 and 2007 c 220 s 3 are each amended to read as follows:

(1) To protect the privacy in reporting and the maintenance of reports of nonaccidental injury, neglect, death, sexual abuse, and cruelty to children by their parents, and to safeguard against arbitrary, malicious, or erroneous information or actions, the department shall not disclose or maintain information related to reports of child abuse or neglect except as provided in this section or as otherwise required by state and federal law.

(2) The department shall destroy all of its records concerning:

(a) A screened-out report, within three years from the receipt of the report; and

(b) An unfounded or inconclusive report, within six years of completion of the investigation, unless a prior or subsequent founded report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child, before the records are destroyed.

(3) The department may keep records concerning founded reports of child abuse or neglect as the department determines by rule.

(4) ~~((A))~~ No unfounded, screened-out, or inconclusive report or information about a family's participation or nonparticipation in the family assessment response may ~~((not))~~ be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW without the consent of the individual who is the subject of the report or family assessment, unless:

(a) The individual seeks to become a licensed foster parent or adoptive parent; or

(b) The individual is the parent or legal custodian of a child being served by one of the agencies referenced in this subsection.

(5)(a) If the department fails to comply with this section, an individual who is the subject of a report may institute proceedings for injunctive or other appropriate relief for enforcement of the requirement to purge information. These proceedings may be instituted in the superior court for the county in which the person resides or, if the person is not then a resident of this state, in the superior court for Thurston county.

(b) If the department fails to comply with subsection (4) of this section and an individual who is the subject of the report or family

assessment response information is harmed by the disclosure of information, in addition to the relief provided in (a) of this subsection, the court may award a penalty of up to one thousand dollars and reasonable attorneys' fees and court costs to the petitioner.

(c) A proceeding under this subsection does not preclude other methods of enforcement provided for by law.

(6) Nothing in this section shall prevent the department from retaining general, nonidentifying information which is required for state and federal reporting and management purposes.

**Sec. 5.** RCW 26.44.050 and 1999 c 176 s 33 are each amended to read as follows:

Except as provided in RCW 26.44.030(11), upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child.

**NEW SECTION. Sec. 6.** A new section is added to chapter 26.44 RCW to read as follows:

(1) Within ten days of the conclusion of the family assessment, the department must meet with the child's parent or guardian to discuss the recommendation for services to address child safety concerns or significant risk of subsequent child maltreatment.

(2) If the parent or guardian disagrees with the department's recommendation regarding the provision of services, the department shall convene a family team decision-making meeting to discuss the recommendations and objections. The caseworker's supervisor and area administrator shall attend the meeting.

(3) If the department determines, based on the results of the family assessment, that services are not recommended then the department shall close the family assessment response case.

**Sec. 7.** RCW 74.13.020 and 2011 c 330 s 4 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Case management" means the management of services delivered to children and families in the child welfare system, including permanency services, caseworker-child visits, family visits, the convening of family group conferences, the development and revision of the case plan, the coordination and monitoring of services needed by the child and family, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

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

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(9) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

~~((9))~~ (10) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

~~((10))~~ (11) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

~~((11))~~ (12) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

~~((12))~~ (13) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

~~((13))~~ (14) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

department to provide case management for the delivery and documentation of child welfare services, as defined in this section.

**Sec. 8.** RCW 74.13.031 and 2011 c 330 s 5 and 2011 c 160 s 2 are each reenacted and amended to read as follows:

(1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's and supervising agency's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) As provided in RCW 26.44.030(11), the department may respond to a report of child abuse or neglect by using the family assessment response.

(5) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

~~((5))~~ (6) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

~~((6))~~ (7) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

~~((7))~~ (8) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

~~((8))~~ (9) The department and supervising agency shall have authority to purchase care for children.

~~((9))~~ (10) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

~~((10))~~ (11) The department and supervising agencies shall have authority to provide continued extended foster care services to youth ages eighteen to twenty-one years to participate in or complete a secondary education program or a secondary education equivalency program.

~~((11))~~ (12) The department ~~((has))~~ shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection ~~((10))~~ (11) of this section.

~~((12))~~ (13) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

~~((13))~~ (14) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department under subsections (4), ~~((6), and)~~ (7), and (8) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

~~((14))~~ (15) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide

preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

~~((15))~~ (16) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

~~((16))~~ (17) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

- (i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;
- (ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);
- (iii) Parent-child visits;
- (iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and
- (v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

**NEW SECTION. Sec. 9.** The Washington state institute for public policy shall conduct an evaluation of the implementation of the family assessment response. The institute shall define the data to be gathered and maintained. At a minimum, the evaluations must address child safety measures, out-of-home placement rates, re-referral rates, and caseload sizes and demographics. The institute shall deliver its first report no later than December 1, 2014, and its final report by December 1, 2016.

**NEW SECTION. Sec. 10.** The department of social and health services shall conduct two client satisfaction surveys of families that have been placed in the family assessment response. The first survey results shall be reported no later than December 1, 2014. The second survey results shall be reported no later than December 1, 2016.

**Sec. 11.** RCW 26.44.125 and 1998 c 314 s 9 are each amended to read as follows:

(1) A person who is named as an alleged perpetrator after October 1, 1998, in a founded report of child abuse or neglect has the right to seek review and amendment of the finding as provided in this section.

(2) Within ~~((twenty))~~ thirty calendar days after ~~((receiving written notice from the department))~~ the department has notified the alleged perpetrator under RCW 26.44.100 that ((#) the person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the department review the finding. The request must be made in writing. The written notice provided by the department must contain at least the following information in plain language:

(a) Information about the department's investigative finding as it relates to the alleged perpetrator;

(b) Sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded reports;

(c) That the alleged perpetrator has the right to submit to child protective services a written response regarding the child protective services finding which, if received, shall be filed in the department's records;

(d) That information in the department's records, including information about this founded report, may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect or child custody;

(e) That founded allegations of child abuse or neglect may be used by the department in determining:

(i) If a perpetrator is qualified to be licensed or approved to care for children or vulnerable adults; or

(ii) If a perpetrator is qualified to be employed by the department in a position having unsupervised access to children or vulnerable adults;

(f) That the alleged perpetrator has a right to challenge a founded allegation of child abuse or neglect.

(3) If a request for review is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding, unless he or she can show that the department did not comply with the notice requirements of RCW 26.44.100.

~~((3))~~ (4) Upon receipt of a written request for review, the department shall review and, if appropriate, may amend the finding. Management level staff within the children's administration designated by the secretary shall be responsible for the review. The review must be completed within thirty days after receiving the written request for review. The review must be conducted in accordance with procedures the department establishes by rule. Upon completion of the review, the department shall notify the alleged perpetrator in writing of the agency's determination. The notification must be sent by certified mail, return receipt requested, to the person's last known address.

~~((4))~~ (5) If, following agency review, the report remains founded, the person named as the alleged perpetrator in the report may request an adjudicative hearing to contest the finding. The adjudicative proceeding is governed by chapter 34.05 RCW and this section. The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination. If a request for an adjudicative proceeding is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

~~((5))~~ (6) Reviews and hearings conducted under this section are confidential and shall not be open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective services reports.

~~((6))~~ (7) The department may adopt rules to implement this section.

**NEW SECTION. Sec. 12.** Sections 1 through 11 of this act take effect December 1, 2013."

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 Substitute Senate Bill No. 6555 and ask the House to recede therefrom.

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

FIFTY SEVENTH DAY, MARCH 5, 2012

2012 REGULAR SESSION

in the House amendment(s) to Engrossed Substitute Senate Bill No. 6555 and ask the House to recede therefrom.

THOMAS HOEMANN, Secretary of the Senate

The motion by Senator Hargrove carried and the Senate refused to concur in the House amendment(s) to Engrossed Substitute Senate Bill No. 6555 and asked the House to recede therefrom by voice vote.

MOTION

At 6:23 p.m., on motion of Senator Eide, the Senate adjourned until 9:30 a.m. Tuesday, March 6, 2012.

BRAD OWEN, President of the Senate



1057-S	Second Reading .....	68
Messages .....	Third Reading Final Passage.....	70
1234	2238-S2	
President Signed .....	President Signed.....	41
Speaker Signed.....	Speaker Signed .....	40
1552-S	2239-S	
Messages .....	President Signed.....	41
1559-S	Speaker Signed .....	40
Messages .....	2254-S	
1627-S	Messages.....	39
Messages .....	2259-S	
1700-S	President Signed.....	41
President Signed .....	Speaker Signed .....	40
Speaker Signed.....	2261-S	
1775-S	Messages.....	39
President Signed .....	2263-S	
Speaker Signed.....	Messages.....	39
1820-S	2293	
President Signed.....	President Signed.....	41
Speaker Signed.....	Speaker Signed .....	40
1860-S3	2299-S	
Messages .....	President Signed.....	41
1983-S	Speaker Signed .....	40
Messages .....	2301-S	
2048-S	President Signed.....	41
Messages .....	Speaker Signed .....	40
2152	2302-S	
President Signed .....	President Signed.....	41
Speaker Signed.....	Speaker Signed .....	40
2156-S2	2305	
President Signed .....	President Signed.....	41
Speaker Signed.....	Speaker Signed .....	40
2188-S	2308	
President Signed.....	Messages.....	39
Speaker Signed.....	2312-S	
2191-S	President Signed.....	41
President Signed .....	Speaker Signed .....	40
Speaker Signed.....	2313-S	
2194-S	Messages.....	39
President Signed .....	2318-S	
Speaker Signed.....	President Signed.....	41
2195	Speaker Signed .....	40
President Signed .....	2319-S2	
Speaker Signed.....	Messages.....	1
2210	2326-S	
President Signed .....	Messages.....	40
Speaker Signed.....	2328	
2212-S	President Signed.....	41
President Signed .....	Speaker Signed .....	40
Speaker Signed.....	2329	
2216-S2	Messages.....	39
President Signed .....	2337-S2	
Speaker Signed.....	Messages.....	40
2223-S	2341-S	
President Signed .....	President Signed.....	41
Speaker Signed.....	Speaker Signed .....	40
2224	2346	
President Signed .....	President Signed.....	41
Speaker Signed.....	Speaker Signed .....	40
2229-S	2347-S	
President Signed .....	Messages.....	40
Speaker Signed.....	2354-S	
2233-S	President Signed.....	41
Messages .....	Speaker Signed .....	40
Other Action.....	2360-S	

President Signed.....	41	Second Reading.....	71
Speaker Signed.....	40	Third Reading Final Passage.....	84
2361-S		2617-S	
Messages.....	70	Messages.....	1
2366-S		2640-S	
President Signed.....	41	Messages.....	70
Speaker Signed.....	40	2657-S	
2389-S		President Signed.....	41
President Signed.....	41	Speaker Signed.....	40
Speaker Signed.....	40	2671	
2420		President Signed.....	41
President Signed.....	41	Speaker Signed.....	41
Speaker Signed.....	40	2673-S	
2456		Messages.....	1
President Signed.....	41	2692-S	
Speaker Signed.....	40	Messages.....	1
2459		2747-S	
President Signed.....	41	President Signed.....	41
Speaker Signed.....	40	Speaker Signed.....	40
2469		2771	
President Signed.....	41	Messages.....	1
Speaker Signed.....	40	2814	
2473-S		President Signed.....	41
President Signed.....	41	Speaker Signed.....	41
Speaker Signed.....	40	5159	
2482		President Signed.....	39
Messages.....	39	5188-S2	
2485		President Signed.....	39
Messages.....	40	5217-S	
2492-S		Messages.....	39
President Signed.....	41	5250-S	
Speaker Signed.....	40	Second Reading.....	64
2499		Third Reading Final Passage.....	65
Messages.....	40	5250-S2	
2502-S		Second Reading.....	64
President Signed.....	41	5365	
Speaker Signed.....	41	Speaker Signed.....	40
2523		5381-S	
President Signed.....	41	Speaker Signed.....	40
Speaker Signed.....	40	5412-S	
2535		Speaker Signed.....	40
Messages.....	39	5715-S	
2541-S		Speaker Signed.....	40
President Signed.....	41	5895-S	
Speaker Signed.....	40	Speaker Signed.....	40
2545-S		5966-S	
President Signed.....	41	Speaker Signed.....	40
Speaker Signed.....	40	5981	
2567-S		Speaker Signed.....	40
Messages.....	39	5991-S	
2570-S		Speaker Signed.....	40
Messages.....	39	6002-S	
2574-S		Speaker Signed.....	40
President Signed.....	41	6038-S	
Speaker Signed.....	40	Speaker Signed.....	40
2582-S		6041-S	
Messages.....	1	President Signed.....	39
2586-S		6046	
Messages.....	39	Speaker Signed.....	40
2592-S		6059	
President Signed.....	41	Speaker Signed.....	40
Speaker Signed.....	41	6073	
2614-S		Second Reading.....	63
Messages.....	71	6073-S	
Other Action.....	84	Second Reading.....	63
Other Action.....	71	Third Reading Final Passage.....	64

6095	Speaker Signed.....	40	6371-S	Speaker Signed.....	40
6098	Speaker Signed.....	40	6387-S	Speaker Signed.....	40
6105-S	Final Passage as amended by House.....	22	6403-S	Final Passage as amended by House.....	63
	Messages.....	21		Messages.....	63
	Other Action.....	22		Other Action.....	63
6112-S	Speaker Signed.....	40	6406	Other Action.....	37
6131	Speaker Signed.....	40		Second Reading.....	3
6135-S	Messages.....	84	6406-S	Other Action.....	21, 37, 39
6140-S2	Final Passage as amended by House.....	27		Second Reading.....	3, 37, 38
	Messages.....	22		Third Reading Final Passage.....	39
	Other Action.....	27	6421-S	Speaker Signed.....	40
6150-S	Messages.....	42	6444-S	Messages.....	3
6167-S	Speaker Signed.....	40	6445-S	Speaker Signed.....	40
6171	Speaker Signed.....	40	6455-S	Messages.....	48
6208-S	Speaker Signed.....	40	6470-S	Speaker Signed.....	40
6215	President Signed.....	39	6555-S	Messages.....	101
6218	Speaker Signed.....	40	6574-S	Speaker Signed.....	40
6237-S	Final Passage as amended by House.....	34	6581	Second Reading.....	65
	Messages.....	27	6581-S	Second Reading.....	65
	Other Action.....	34		Third Reading Final Passage.....	65
6253-S	President Signed.....	39	6582-S	Messages.....	57
6254	Final Passage as amended by House.....	34	6607	Second Reading.....	65
	Messages.....	34	6607-S	Other Action.....	66
	Other Action.....	34		Second Reading.....	65
6255	Speaker Signed.....	40		Third Reading Final Passage.....	66
6256	President Signed.....	39	8016-S	Speaker Signed.....	40
6277	Second Reading.....	64	8221	Second Reading.....	66
6277-S	Second Reading.....	64		Third Reading Final Passage.....	68
	Third Reading Final Passage.....	64	8703	Adopted.....	35
6290	Speaker Signed.....	40		Introduced.....	35
6325-S	Speaker Signed.....	40	9155 David Troutt	Confirmed.....	41
6328-S	Final Passage as amended by House.....	36	9160 Stuart Halson	Confirmed.....	1
	Messages.....	36	9187 Thomas Campbell	Confirmed.....	2
	Other Action.....	36	9222 Royce Pollard	Confirmed.....	2
6354-S	Final Passage as amended by House.....	37	9228 Harriet Spanel	Confirmed.....	41
	Messages.....	36	9250 Frederick Mendoza	Confirmed.....	42
	Other Action.....	36	PRESIDENT OF THE SENATE		
6355-S	Final Passage as amended by House.....	63		Intro. Special Guests, 2012 Apple Blossom Queen and Princesses.....	35
	Messages.....	60			
	Other Action.....	63			

Intro. Special Guests, Chaperones, Irene Soth and Steve Soth .....35  
 Intro. Special Guests, Miss Washington Pageant contestants .....36  
 Intro. Special Guests, Tuskegee Airmen .....2  
 Intro. Special Guests, Tuskegee Airmens family.....2  
 Remarks by the President .....3  
 Reply by the President.....1  
 Ruling by the President SSB 6406 .....37

WASHINGTON STATE SENATE

Personal Privilege, Senator Sheldon ..... 1  
 Personal Privilege, Senator Shin ..... 2  
 Point of Order, Senator Ranker ..... 21  
 Remarks by Colonel Ed Drummond ..... 2  
 Remarks by Samantha Allen ..... 35  
 Remarks by Tommie Lamb, President of the Tuskegee  
     Airmen, Inc ..... 3