

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

**SIXTY-FIRST LEGISLATURE - REGULAR SESSION**

**NINETY SEVENTH DAY**

House Chamber, Olympia, Saturday, April 18, 2009

The House was called to order at 9:00 a.m. by the Speaker (Representative Morris presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Ron Finley and Dave Mangino. The Speaker (Representative Morris presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Representative Jan Angel.

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

**MESSAGE FROM THE SENATE**

April 17, 2009

Mr. Speaker:

The Senate has passed:

SECOND SUBSTITUTE HOUSE BILL NO. 1025,  
HOUSE BILL NO. 1048,  
SUBSTITUTE HOUSE BILL NO. 1283,  
SUBSTITUTE HOUSE BILL NO. 1286,  
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1954,  
ENGROSSED HOUSE BILL NO. 2279,  
ENGROSSED HOUSE BILL NO. 2285,

and the same are herewith transmitted.

Thomas Hoemann, Secretary

**INTRODUCTION AND FIRST READING**

HB 2381 by Representatives Green and Morrell

AN ACT Relating to creating the Washington state board of naturopathy; amending RCW 18.36A.020, 18.36A.060, 18.36A.080, 18.36A.090, 18.36A.100, 18.36A.110, 18.36A.120, and 18.130.040; adding new sections to chapter 18.36A RCW; and repealing RCW 18.36A.070.

Referred to Committee on Health Care & Wellness.

There being no objection, the bill listed on the day's introduction sheet under the fourth order of business was referred to the committee so designated.

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

**SECOND READING**

**HOUSE BILL NO. 2068, by Representatives Goodman, Hurst, Priest, O'Brien, Miloscia, Seaquist, Cody, Appleton, Roberts, Campbell and Morrell**

**Concerning criminal background checks.**

The bill was read the second time.

There being no objection, Substitute House Bill No. 2068 was substituted for House Bill No. 2068 and the substitute bill was placed on the second reading calendar.

SUBSTITUTE HOUSE BILL NO. 2068 was read the second time.

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

Representatives Cody, Alexander and Goodman spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2068.

**MOTION**

On motion of Representative Santos, Representative Flannigan was excused.

**ROLL CALL**

The Clerk called the roll on the final passage of and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 2068, having received the necessary constitutional majority, was declared passed.

**HOUSE BILL NO. 2359, by Representative Cody**

**Concerning delaying the implementation date for peer mentoring for long-term care workers.**

The bill was read the second time.

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

Representatives Cody and Alexander spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 2359.

**ROLL CALL**

The Clerk called the roll on the final passage of House Bill No. 2359 and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 2359, having received the necessary constitutional majority, was declared passed.

**HOUSE BILL NO. 2360, by Representative Darneille**

**Concerning consolidation of administrative services for AIDS grants in the department of health.**

The bill was read the second time.

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

Representatives Darneille and Alexander spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 2360.

**ROLL CALL**

The Clerk called the roll on the final passage of House Bill No. 2360 and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 2360, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

April 14, 2009

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 1138 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 70.54 RCW to read as follows:

(1) A retail establishment that has a restroom facility for its employees must allow a customer to use that facility during normal business hours if the customer requesting the use of the employee restroom facility has been diagnosed with an eligible medical condition or uses an ostomy device, and provides evidence of the existence of the eligible medical condition or device in writing in the form of either:

(a) A signed statement by the customer's health care provider that shall be on a form that has been prepared by the department of health under subsection (2) of this section; or

(b) An identification card that is issued by a nonprofit organization whose purpose includes serving individuals who suffer from an eligible medical condition or use an ostomy device.

(2) The department of health shall develop a standard electronic form that may be signed by a health care provider as evidence of the existence of an eligible medical condition or use of an ostomy device as required by subsection (1) of this section. The form shall include a brief description of a customer's rights under this section and shall be made available for a customer or his or her health care provider to access by computer. Nothing in this section requires the department to distribute printed versions of the form.

(3) Use of a fraudulent form as evidence of the existence of an eligible medical condition or use of an ostomy device is a misdemeanor punishable under RCW 9A.20.010.

(4) A retail establishment that has a restroom facility for its employees must allow a customer to use that facility during normal business hours if all of the following conditions are met:

(a) Three or more employees of the retail establishment are working at the time the customer requests use of the employee restroom facility;

(b) The retail establishment does not normally make a restroom available to the public;

(c) The restroom facility itself is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer; and

(d) Allowing the customer to access the restroom facility does not pose a security risk to the retail establishment or its employees.

(5) For a first violation of this section, the city or county attorney shall issue a warning letter to the retail establishment and employee informing the establishment and employee of the requirements of this section. A retail establishment or an employee of a retail establishment that violates this section after receiving a warning letter is guilty of a civil infraction. The fine for a first infraction must not exceed one hundred dollars.

(6) A retail establishment is not required to make any physical changes to an employee restroom facility under this section and may require that an employee accompany the customer to the employee restroom facility.

(7) A retail establishment or an employee of a retail establishment is not civilly liable for any act or omission in allowing a customer to use an employee restroom facility that is not a public restroom if the act or omission meets all of the following:

- (a) It is not willful or grossly negligent;
- (b) It occurs in an area of the retail establishment that is not accessible to the public; and
- (c) It results in an injury to or death of the customer or any individual other than an employee accompanying the customer.

(8) For purposes of this section:

(a) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(b) "Eligible medical condition" means Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome, or any other permanent or temporary medical condition that requires immediate access to a restroom facility.

(c) "Health care provider" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, an osteopathic physicians assistant licensed under chapter 18.57A RCW, a physician or surgeon licensed under chapter 18.71 RCW, or a physician assistant licensed under chapter 18.71A RCW.

(d) "Retail establishment" means a place of business open to the general public for the sale of goods or services. Retail establishment does not include any structure such as a filling station, service station, or restaurant of eight hundred square feet or less that has an employee restroom facility located within that structure."

On page 1, line 2 of the title, after "establishment;" strike the remainder of the title and insert "adding a new section to chapter 70.54 RCW; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House did not concur in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1138 and asked the Senate to recede therefrom.

**MESSAGE FROM THE SENATE**

April 10, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1592 with the following amendment:

On page 10, beginning on line 23, after "the secretary" strike "is not required to" and insert "shall"

On page 10, beginning on line 24, after "dissolved" strike "for not complying with this section" and insert "under this subsection if the corporation sole complies with the requirements of section 15 of this act within five years of the administrative dissolution"

On page 11, line 10, after "of state" strike "may" and insert "shall"

On page 11, line 14, after "within" strike "fifteen days" and insert "five years"

On page 11, line 20, after "circumstances" strike "giving rise to" and insert "of"

On page 11, line 21, after "filing or lapse," insert "that disproportionate harm would occur to the corporation sole if relief were not granted,"

and the same is herewith transmitted.

Thomas Hoemann, Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House did not concur in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1592 and asked the Senate to recede therefrom.

**MESSAGE FROM THE SENATE**

April 9, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1758 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature has previously affirmed the value of career and technical education, particularly in programs that lead to nationally recognized certification. These programs provide students with the knowledge and skills to become responsible citizens and contribute to their own economic well-being and that of their families and communities, which is the goal of education in the public schools. The legislature has also previously affirmed the value of dual enrollment in college and high school programs that can lead to both an associate degree and a high school diploma. Therefore, the legislature intends to maximize students' options and choices for completing high school by awarding diplomas to students who complete these valuable postsecondary programs.

**Sec. 2.** RCW 28B.50.535 and 2007 c 355 s 2 are each amended to read as follows:

A community or technical college may issue a high school diploma or certificate as provided under this section.

(1) An individual who satisfactorily meets the requirements for high school completion shall be awarded a diploma from the college, subject to rules adopted by the superintendent of public instruction and the state board of education.

(2) An individual enrolled through the option established under RCW 28A.600.310 through 28A.600.400 who satisfactorily completes an associate degree, including an associate of arts degree, associate of science degree, associate of technology degree, or associate in applied science degree, shall be awarded a diploma from the college upon written request from the student.

(3) An individual, twenty-one years or older, who enrolls in a community or technical college for the purpose of obtaining an associate degree and who satisfactorily completes an associate degree, including an associate of arts degree, associate of science degree, associate of technology degree, or associate in applied science degree, shall be awarded a diploma from the college upon written request from the student. Individuals under this section are not eligible for funding provided under chapter 28A.150 RCW.

**Sec. 3.** RCW 28A.225.290 and 1990 1st ex.s. c 9 s 207 are each amended to read as follows:

(1) The superintendent of public instruction shall prepare and annually distribute an information booklet outlining parents' and guardians' enrollment options for their children.

(2) ~~((Before the 1991-92 school year,))~~ The booklet shall be distributed to all school districts by the office of the superintendent of public instruction and shall be posted on the web site of the office of the superintendent of public instruction. School districts shall have a copy of the information booklet available for public inspection at each school in the district, at the district office, and in public libraries.

(3) The booklet shall include:

(a) Information about enrollment options and program opportunities, including but not limited to programs in RCW 28A.225.220, 28A.185.040, 28A.225.200 through 28A.225.215, 28A.225.230 through 28A.225.250, ~~((28A.175.090,))~~ 28A.340.010 through 28A.340.070 (small high school cooperative projects), and 28A.335.160.

(b) Information about the running start ~~((=community college or vocational-technical institute choice))~~ program under RCW 28A.600.300 through ~~((28A.600.395))~~ 28A.600.400; ((and))

(c) Information about the seventh and eighth grade choice program under RCW 28A.230.090; and

(d) Information about the college high school diploma options under RCW 28B.50.535.

**Sec. 4.** RCW 28A.600.320 and 2008 c 95 s 3 are each amended to read as follows:

A school district shall provide general information about the program to all pupils in grades ten, eleven, and twelve and the parents and guardians of those pupils, including information about the opportunity to enroll in the program through online courses available at community and technical colleges and other state institutions of higher education and including the college high school diploma options under RCW 28B.50.535. To assist the district in planning, a pupil shall inform the district of the pupil's intent to enroll in courses at an institution of higher education for credit. Students are responsible for applying for admission to the institution of higher education.

**Sec. 5.** RCW 28A.655.061 and 2008 c 321 s 2 are each amended to read as follows:

(1) The high school assessment system shall include but need not be limited to the Washington assessment of student learning, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and if approved by the legislature pursuant to subsection (10) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained by most students at about the age of sixteen, and is evidence that the students have successfully met

the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045 or 28A.655.0611, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3) Beginning with the graduating class of 2008, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the reading, writing, and mathematics content areas of the high school Washington assessment of student learning shall earn a certificate of academic achievement. If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area up to four times at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection (10) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has taken the Washington assessment of student learning at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement.

(4) Beginning no later than with the graduating class of 2013, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the Washington assessment of student learning or the objective alternative assessments in order to earn a certificate of academic achievement. The state board of education may adopt a rule that implements the requirements of this subsection (4) beginning with a graduating class before the graduating class of 2013, if the state board of education adopts the rule by September 1st of the freshman school year of the graduating class to which the requirements of this subsection (4) apply. The state board of education's authority under this subsection (4) does not alter the requirement that any change in performance standards for the tenth grade assessment must comply with RCW 28A.305.130.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

(7) School districts must make available to students the following options:

(a) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

(8) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

(9) Opportunities to retake the assessment at least twice a year shall be available to each school district.

(10)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process for students' scores, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in RCW 28A.655.065 or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(b)(i) A student's score on the mathematics, reading or English, or writing portion of the (~~scholastic assessment test~~)SAT(~~(t)~~) or the (~~American college test~~)ACT(~~(t)~~) may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the relevant portion of the SAT or ACT to meet or exceed the state standard in the relevant content area on the Washington assessment of student learning. The state board of education shall identify the first scores by December 1, 2007. After the first scores are established, the state board may increase but not decrease the scores required for students to meet or exceed the state standards.

(ii) Until August 31, 2008, a student's score on the mathematics portion of the (~~preliminary scholastic assessment test~~)PSAT(~~(t)~~) may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standard for the certificate of academic achievement. The state board of education shall identify the score students must achieve on the mathematics portion of the PSAT to meet or exceed the state standard in that content area on the Washington assessment of student learning.

(iii) A student who scores at least a three on the grading scale of one to five for selected AP examinations may use the score as an objective alternative assessment under this section for demonstrating that a student has met or exceeded state standards for the certificate of academic achievement. A score of three on the AP examinations in calculus or statistics may be used as an alternative assessment for the mathematics portion of the Washington assessment of student learning. A score of three on the AP examinations in English language and composition may be used as an alternative assessment for the writing portion of the Washington assessment of student learning. A score of three on the AP examinations in English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics may be used as an alternative assessment for the reading portion of the Washington assessment of student learning.

(11) By December 15, 2004, the house of representatives and senate education committees shall obtain information and conclusions from recognized, independent, national assessment experts regarding the validity and reliability of the high school Washington assessment of student learning for making individual student high school graduation determinations.

(12) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for and notify students and their parents or legal guardians as provided in this subsection (12).

(a) Student learning plans are required for eighth through twelfth grade students who were not successful on any or all of the content areas of the Washington assessment for student learning during the previous school year or who may not be on track to graduate due to credit deficiencies or absences. The parent or legal guardian shall be notified about the information in the student learning plan, preferably through a parent conference and at least annually. To the extent feasible, schools serving English language learner students and their parents shall translate the plan into the primary language of the family. The plan shall include the following information as applicable:

(i) The student's results on the Washington assessment of student learning;

(ii) If the student is in the transitional bilingual program, the score on his or her Washington language proficiency test II;

(iii) Any credit deficiencies;

(iv) The student's attendance rates over the previous two years;

(v) The student's progress toward meeting state and local graduation requirements;

(vi) The courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation;

(vii) Remediation strategies and alternative education options available to students, including informing students of the option to continue to receive instructional services after grade twelve or until the age of twenty-one;

(viii) The alternative assessment options available to students under this section and RCW 28A.655.065;

(ix) School district programs, high school courses, and career and technical education options available for students to meet graduation requirements; and

(x) Available programs offered through skill centers or community and technical colleges, including the college high school diploma options under RCW 28B.50.535.

(b) All fifth grade students who were not successful in one or more of the content areas of the fourth grade Washington assessment of student learning shall have a student learning plan.

(i) The parent or guardian of the student shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the school intends to take to improve the student's skills in any content area in which the student was unsuccessful, and provide strategies to help them improve their student's skills.

(ii) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary."

On page 1, line 2 of the title, after "diplomas;" strike the remainder of the title and insert "amending RCW 28B.50.535, 28A.225.290, 28A.600.320, and 28A.655.061; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House did not concur in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1758 and asked the Senate to recede therefrom.

**MESSAGE FROM THE SENATE**

April 8, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1845 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 26.09.105 and 1994 c 230 s 1 are each amended to read as follows:

(1) ~~((In entering or modifying))~~ Whenever a child support order is entered or modified under this chapter, the court shall require ~~((either or))~~ both parents to provide medical support for any child named in the order as provided in this section.

(a) Under appropriate circumstances, the court may excuse one parent from the responsibility to provide health insurance or cash medical support;

(b) The court shall always require both parents to contribute their proportionate share of uninsured medical expenses.

(2) Both parents share the obligation to provide medical support for the child or children specified in the order, by providing health insurance coverage, contributing a cash medical support obligation when appropriate, and paying a proportionate share of any uninsured medical expenses.

(a) The court may specify priorities for enforcement under subsection (4) of this section.

(b) If the court does not so specify, the provisions of subsection (3) of this section shall apply.

(3) If neither parent provides proof that he or she is providing health insurance for the child at the time the support order is entered, the division of child support or one of the parents may enforce a parent's obligation to provide health insurance coverage as provided in RCW 26.18.170.

(4)(a) If there is sufficient evidence provided at the time the order is entered, the court may make a determination of which parent must provide coverage and which parent must contribute a sum certain amount which represents his or her proportionate share of the premium paid, not to exceed twenty-five percent of his or her basic child support obligation.

(b) If both parents have available health insurance coverage that is accessible to the child at the time the support order is entered, the court has discretion to order the parent with better coverage to provide the health insurance coverage for the child and the other parent to pay as cash medical support his or her proportionate share of the premium paid, but not to exceed twenty-five percent of his or her basic child support obligation. In making the determination of which coverage is better, the court shall consider the needs of the child, the cost and extent of each parent's coverage, and the accessibility of the coverage.

(c) Each parent shall remain responsible for his or her proportionate share of uninsured medical expenses.

(d) The order must provide that if the parties' circumstances change, the parties' medical support obligations will be enforced as provided in RCW 26.18.170.

(5) A parent who is ordered to maintain or provide health insurance coverage ~~((except as provided in subsection (2) of this section))~~ may comply with that requirement by:

(a) Providing proof of accessible private insurance coverage for any child named in the order ~~((if- (a))); or~~

(b) Providing coverage that can be extended to cover the child that is ~~((or becomes))~~ available to that parent through employment or that is union-related ~~((; and~~ ~~((b)))~~, if the cost of such coverage does not exceed twenty-five percent of ~~((the obligated))~~ that parent's basic child support obligation.

~~((2))~~ (6) The court ~~((shall consider the best interests of the child and have discretion to))~~ may order a parent to provide health insurance coverage ~~((when entering or modifying a support order under this chapter if the cost of such coverage))~~ that exceeds twenty-five percent of ~~((the obligated))~~ that parent's basic support obligation if it is in the best interests of the child to provide coverage.

~~((3))~~ (7) If the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment, the obligated parent shall pay cash medical support in an amount equal to his or her proportionate share of the health insurance premium, not to exceed twenty-five percent of his or her basic child support obligation.

(8) Each parent is responsible for his or her proportionate share of uninsured medical expenses for the child or children covered by the support order.

(9) The parents ~~((shall))~~ must maintain ~~((such))~~ health insurance coverage as required under this section until:

(a) Further order of the court;

(b) The child is emancipated, if there is no express language to the contrary in the order; or

(c) Health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

~~((4))~~ (10) A parent who is required to extend health insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

~~((5))~~ (11) This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health care costs, or insurance premiums which are in addition to and not inconsistent with this section.

~~((6))~~ (12) A parent ordered to provide health insurance coverage ~~((shall))~~ must provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order to:

(a) The ~~((physical custodian))~~ other parent; or

(b) The department of social and health services if the parent has been notified or ordered to make support payments to the Washington state support registry.

~~((7))~~ (13) Every order requiring a parent to provide health care or insurance coverage ~~((shall))~~ must be entered in compliance with RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW.

~~((8))~~ "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.)

(14) When a parent is providing health insurance coverage at the time the order is entered, the premium shall be included in the worksheets for the calculation of child support under chapter 26.19 RCW.

(15) As used in this section:

(a) "Accessible" means health insurance coverage which provides primary care services to the child or children with reasonable effort by the custodian.

(b) "Cash medical support" means the amount that a parent must pay

to the other parent as a proportionate share of the cost of uninsured medical expenses, state-financed medical coverage provided by the department under chapter 74.09 RCW, or the cost of health insurance coverage provided by another parent in an amount not to exceed twenty-five percent of the obligated parent's basic support obligation.

(c) "Health insurance coverage" does not include medical assistance

provided under chapter 74.09 RCW.

(d) "Uninsured medical expenses" includes premiums, copays, deductibles, along with other health care costs not covered by insurance.

(e) "Obligated parent" means a parent ordered to provide health insurance coverage for the children.

(f) "Proportionate share" means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed when determining a parent's child support obligation under chapter 26.19 RCW.

(16) The department of social and health services has rule-making authority to enact rules in compliance with 45 C.F.R. Parts 302, 303, 304, 305, and 308.

Sec. 2. RCW 26.18.170 and 2007 c 143 s 1 are each amended to read as follows:

(1) Whenever a parent (~~(who)~~) has been ordered to provide (~~(health insurance coverage)~~) medical support for a dependent child (~~(fails to provide such coverage or lets it lapse)~~), the department or (~~(a)~~) the other parent may seek enforcement of the (~~(coverage order)~~) medical support as provided under this section.

(a) If the obligated parent provides proof that he or she provides accessible coverage for the child through private insurance, that parent has satisfied his or her obligation to provide health insurance coverage.

(b) If the obligated parent does not provide proof of coverage, either the department or the other parent may take appropriate action as provided in this section to enforce the obligation.

(2) The department may attempt to enforce a parent's requirement to provide health insurance coverage for the dependent child. If health insurance coverage is not available through the parent's employment or union at a cost not to exceed twenty-five percent of the parent's basic support obligation, or as otherwise provided in the support order, the department may enforce any cash medical support obligation ordered to be provided under RCW 26.09.105 or 74.20A.300.

(3) A parent seeking to enforce another parent's cash medical support obligation under RCW 26.09.105 may:

(a) Apply for support enforcement services from the division of child support as provided by rule; or

(b) Take action on his or her own behalf by:

(i) Filing a motion in the underlying superior court action; or

(ii) Initiating an action in superior court to determine the amount owed by the obligated parent, if there is not already an underlying superior court action.

(4)(a) The department may serve a notice of support owed under RCW 26.23.110 on a parent to determine the amount of that parent's cash medical support obligation.

(b) Whether or not the child receives temporary assistance for needy families or medicaid, the department may enforce the responsible parent's cash medical support obligation. When the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment, the department may disburse amounts collected to the

custodial parent to be used for the medical costs of the child or the department may retain amounts collected and apply them toward the cost of providing the child's state-financed medical coverage. The department may disregard cash medical support payments in accordance with federal law.

(5)(a) If the (~~((parent's))~~) order to provide health insurance coverage contains language notifying the parent ordered to provide coverage that failure to provide such coverage or proof that such coverage is unavailable may result in direct enforcement of the order and orders payments through, or has been submitted to, the Washington state support registry for enforcement, then the department may, without further notice to the parent, send a national medical support notice pursuant to 42 U.S.C. Sec. 666(a)(19), and sections 401 (e) and (f) of the federal child support and performance incentive act of 1998 to the parent's employer or union. The notice shall be served:

(i) By regular mail;

(ii) In the manner prescribed for the service of a summons in a civil action;

(iii) By certified mail, return receipt requested; or

(iv) By electronic means if there is an agreement between the secretary of the department and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means.

(b) The notice shall require the employer or union to enroll the child in the health insurance plan as provided in subsection (~~((3))~~) (8) of this section.

(c) The returned part A of the national medical support notice to the division of child support by the employer constitutes proof of service of the notice in the case where the notice was served by regular mail.

(~~((4))~~) (6) Upon receipt of a national medical support notice from a child support agency operating under Title IV-D of the federal social security act:

(a) The parent's employer or union shall comply with the provisions of the notice, including meeting response time frames and withholding requirements required under part A of the notice;

(b) The parent's employer or union shall also be responsible for complying with forwarding part B of the notice to the child's plan administrator, if required by the notice;

(c) The plan administrator is responsible for complying with the provisions of the notice.

(7) If the parent's order to provide health insurance coverage does not order payments through, and has not been submitted to, the Washington state support registry for enforcement:

(~~((4))~~) (a) The parent seeking enforcement may, without further notice to the (~~((other))~~) obligated parent, send a certified copy of the order requiring health insurance coverage to the (~~((obligor's))~~) parent's employer or union by certified mail, return receipt requested; and

(~~((4))~~) (b) The parent seeking enforcement shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court and require the employer or union to enroll the child in the health insurance plan as provided in subsection (~~((3))~~) (8) of this section.

(~~((3))~~) (8) Upon receipt of an order that provides for health insurance coverage:

(a) The parent's employer or union shall answer the party who sent the order within twenty days and confirm that the child:

(i) Has been enrolled in the health insurance plan;

(ii) Will be enrolled; or

(iii) Cannot be covered, stating the reasons why such coverage cannot be provided;

(b) The employer or union shall withhold any required premium from the parent's income or wages;

(c) If more than one plan is offered by the employer or union, and each plan may be extended to cover the child, then the child shall be enrolled in the parent's plan. If the parent's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the parent;

(d) The employer or union shall provide information about the name of the health insurance coverage provider or issuer and the extent of coverage available to the parent and shall make available any necessary claim forms or enrollment membership cards.

~~((4)) Upon receipt of a national medical support notice from a child support agency operating under Title IV-D of the federal social security act:~~

~~—(a) The parent's employer or union shall comply with the provisions of the notice, including meeting response time frames and withholding requirements required under part A of the notice;~~

~~—(b) The parent's employer or union shall also be responsible for complying with forwarding part B of the notice to the child's plan administrator, if required by the notice;~~

~~—(c) The plan administrator shall be responsible for complying with the provisions of the notice.~~

~~—(5)) (9) If the order for coverage contains no language notifying either or both parents that failure to provide health insurance coverage or proof that such coverage is unavailable may result in direct enforcement of the order, the department or the parent seeking enforcement may serve a written notice of intent to enforce the order on the ~~(other)~~ obligated parent by certified mail, return receipt requested, or by personal service. If the parent required to provide medical support fails to provide written proof that such coverage has been obtained or applied for or fails to provide proof that such coverage is unavailable within twenty days of service of the notice, the department or the parent seeking enforcement may proceed to enforce the order directly as provided in subsection ~~((2))~~ (5) of this section.~~

~~((6)) (10) If the parent ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the department or the parent seeking enforcement may serve a written notice of intent to purchase health insurance coverage on the obligated parent ~~((required to provide medical support))~~ by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.~~

~~((7)) (11) If the department serves a notice under subsection ~~((6))~~ (10) of this section the parent required to provide medical support shall, within twenty days of the date of service:~~

~~(a) File an application for an adjudicative proceeding; or~~

~~(b) Provide written proof to the department that the obligated parent has either applied for, or obtained, coverage accessible to the child.~~

~~((8)) (12) If the parent seeking enforcement serves a notice under subsection ~~((6))~~ (10) of this section, within twenty days of the date of service the parent required to provide medical support shall provide written proof to the parent seeking enforcement that ~~((the parent required to provide medical support))~~ he or she has either applied for, or obtained, coverage accessible to the child.~~

~~((9)) (13) If the parent required to provide medical support fails to respond to a notice served under subsection ~~((6))~~ (10) of this section to the party who served the notice, the party who served the~~

notice may purchase the health insurance coverage specified in the notice directly.

~~(a) If the obligated parent is the responsible parent, the amount of the monthly premium shall be added to the support debt and be collectible without further notice.~~

~~(b) If the obligated parent is the custodial parent, the responsible parent may file an application for enforcement services and ask the department to establish and enforce the custodial parent's obligation.~~

~~(c) The amount of the monthly premium may be collected or accrued until the parent required to provide medical support provides proof of the required coverage.~~

~~((10)) (14) The signature of the parent seeking enforcement or of a department employee shall be a valid authorization to the coverage provider or issuer for purposes of processing a payment to the child's health services provider. An order for health insurance coverage shall operate as an assignment of all benefit rights to the parent seeking enforcement or to the child's health services provider, and in any claim against the coverage provider or issuer, the parent seeking enforcement or his or her assignee shall be subrogated to the rights of the parent obligated to provide medical support for the child. Notwithstanding the provisions of this section regarding assignment of benefits, this section shall not require a health care service contractor authorized under chapter 48.44 RCW or a health maintenance organization authorized under chapter 48.46 RCW to deviate from their contractual provisions and restrictions regarding reimbursement for covered services. If the coverage is terminated, the employer shall mail a notice of termination to the department or the parent seeking enforcement at that parent's last known address within thirty days of the termination date.~~

~~((11)) (15) This section shall not be construed to limit the right of the parents or parties to the support order to bring an action in superior court at any time to enforce, modify, or clarify the original support order.~~

~~((12)) (16) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.~~

~~((13)) (17) If a parent required to provide medical support fails to pay his or her portion, determined under RCW 26.19.080, of any premium, deductible, copay, or uninsured medical expense incurred on behalf of the child, pursuant to a child support order, the department or the ~~((obligee))~~ parent seeking reimbursement of medical expenses may enforce collection of ~~((that))~~ the obligated parent's portion of the deductible, copay, or uninsured medical expense incurred on behalf of the child.~~

~~(a) If the department is enforcing the order ~~((the parent required to provide medical support shall have his or her))~~ and the responsible parent is the obligated parent, the obligated parent's portion of the deductible, copay, or uninsured medical expenses incurred on behalf of the child added to the support debt and be collectible without further notice, following the reduction of the expenses to a sum certain either in a court order or by the department, pursuant to RCW 26.23.110.~~

~~((14)) (b) If the custodial parent is the obligated parent, the responsible parent may file an application for enforcement services and ask the department to establish and enforce the custodial parent's obligation.~~

~~(18) As used in this section:~~



(a) "Accessible" means health insurance coverage which provides primary care services to the child or children with reasonable effort by the custodian.

(b) "Cash medical support" means the amount that a parent must pay

to the other parent as a proportionate share of the cost of uninsured medical expenses, state-financed medical coverage provided by the department under chapter 74.09 RCW, or the cost of health insurance coverage provided by another parent in an amount not to exceed twenty-five percent of the obligated parent's basic support obligation.

(c) "Health insurance coverage" does not include medical assistance provided under chapter 74.09 RCW.

(d) "Uninsured medical expenses" includes premiums, copays, deductibles, along with other health care costs not covered by insurance.

(e) "Obligated parent" means a parent ordered to provide health insurance coverage for the children.

(19) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under ((parts)) 45 C.F.R. Parts 302, 303, 304, 305, and 308.

**Sec. 3.** RCW 26.18.180 and 2000 c 86 s 3 are each amended to read as follows:

(1) ((An obligated parent's)) The employer or union of a parent who has been ordered to provide health insurance coverage shall be liable for a fine of up to one thousand dollars per occurrence, if the employer or union fails or refuses, within twenty days of receiving the order or notice for health insurance coverage to:

(a) Promptly enroll the ((obligated)) parent's child in the health insurance plan; or

(b) Make a written answer to the person or entity who sent the order or notice for health insurance coverage stating that the child:

(i) Will be enrolled in the next available open enrollment period; or

(ii) Cannot be covered and explaining the reasons why coverage cannot be provided.

(2) Liability may be established and the fine may be collected by the office of support enforcement under chapter 74.20A or 26.23 RCW using any of the remedies contained in those chapters.

(3) Any employer or union who enrolls a child in a health insurance plan in compliance with chapter 26.18 RCW shall be exempt from liability resulting from such enrollment.

**Sec. 4.** RCW 26.23.050 and 2007 c 143 s 3 are each amended to read as follows:

(1) If the division of child support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the superior court shall include in all court orders that establish or modify a support obligation:

(a) A provision that orders and directs the responsible parent to make all support payments to the Washington state support registry;

(b) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) A statement that the receiving parent might be required to submit an accounting of how the support, including any cash medical support, is being spent to benefit the child;

(d) A statement that any parent required to provide health insurance coverage for the child or children covered by the order must notify the division of child support and the other parent when the coverage terminates; and

((~~and~~)) (e) A statement that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320.

As used in this subsection and subsection (3) of this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate wage withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

(2) In all other cases not under subsection (1) of this section, the court may order the responsible parent to make payments directly to the person entitled to receive the payments, to the Washington state support registry, or may order that payments be made in accordance with an alternate arrangement agreed upon by the parties.

(a) The superior court shall include in all orders under this subsection that establish or modify a support obligation:

(i) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(A) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(B) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; ((and))

(ii) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child;

(iii) A statement that any parent required to provide health insurance coverage for the child or children covered by the order must notify the division of child support and the other parent when the coverage terminates; and

(iv) A statement that a parent seeking to enforce the obligation to provide health insurance coverage may:

(A) File a motion in the underlying superior court action; or

(B) If there is not already an underlying superior court action, initiate an action in the superior court.

As used in this subsection, "good cause not to require immediate income withholding" is any reason that the court finds appropriate.

(b) The superior court may order immediate or delayed income withholding as follows:

(i) Immediate income withholding may be ordered if the responsible parent has earnings. If immediate income withholding is ordered under this subsection, all support payments shall be paid to the Washington state support registry. The superior court shall issue a mandatory wage assignment order as set forth in chapter 26.18 RCW when the support order is signed by the court. The parent entitled to receive the transfer payment is responsible for serving the employer with the order and for its enforcement as set forth in chapter 26.18 RCW.

(ii) If immediate income withholding is not ordered, the court shall require that income withholding be delayed until a payment is past due. The support order shall contain a statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent, after a payment is past due.

(c) If a mandatory wage withholding order under chapter 26.18 RCW is issued under this subsection and the division of child support provides support enforcement services under RCW 26.23.045, the existing wage withholding assignment is prospectively superseded upon the division of child support's subsequent service of an income withholding notice.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320. All administrative orders shall also state that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the Washington state support registry and a statement that withholding action may be taken against wages, earnings, assets, or benefits if a support payment is past due or at any time after the entry of the order, or that a parent's licensing privileges may not be renewed, or may be suspended, the division of child support may serve a notice on the responsible parent stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) The address where the support payment is to be sent;

(b) That withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of a support order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) The names and ages of the dependent children;

(g) A provision requiring both the responsible parent and the custodial parent to keep the Washington state support registry informed of whether he or she has access to health insurance

coverage at reasonable cost and, if so, the health insurance policy information;

(h) That either or both the responsible parent and the custodial parent shall be obligated to provide ~~((health insurance coverage))~~ medical support for his or her child through health insurance coverage if:

(i) The obligated parent provides accessible coverage for the child through private insurance; or

(ii) Coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related; or

(iii) In the absence of such coverage, through an additional sum certain amount, as a cash medical support obligation as provided under RCW 26.09.105;

(i) That a parent providing health insurance coverage must notify both the division of child support and the other parent when coverage terminates;

(j) That if proof of health insurance coverage or proof that the coverage is unavailable is not provided within twenty days, the parent seeking enforcement or the department may seek direct enforcement of the coverage through the employer or union of the parent required to provide medical support without further notice to the parent as provided under chapter 26.18 RCW;

~~((j))~~ (k) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

~~((k))~~ (l) That the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320;

~~((l))~~ (m) That each parent must:

(i) Promptly file with the court and update as necessary the confidential information form required by subsection (7) of this section; and

(ii) Provide the state case registry and update as necessary the information required by subsection (7) of this section; and

~~((m))~~ (n) That parties to administrative support orders shall provide to the state case registry and update as necessary their residential addresses and the address of the responsible parent's employer. The division of child support may adopt rules that govern the collection of parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, the names of the children, social security numbers of the children, dates of birth of the children, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers to enforce an administrative support order. The division of child support shall not release this information if the division of child support determines that there is reason to believe that release of the information may result in physical or emotional harm to the party or to the child, or a restraining order or protective order is in effect to protect one party from the other party.

(6) After the responsible parent has been ordered or notified to make payments to the Washington state support registry under this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income-withholding action. The responsible parent shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW 74.20.101. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

(7) All petitioners and parties to all court actions under chapters 26.09, 26.10, 26.12, 26.18, 26.21A, 26.23, 26.26, and 26.27 RCW shall complete to the best of their knowledge a verified and signed confidential information form or equivalent that provides the parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers. The clerk of the court shall not accept petitions, except in parentage actions initiated by the state, orders of child support, decrees of dissolution, or paternity orders for filing in such actions unless accompanied by the confidential information form or equivalent, or unless the confidential information form or equivalent is already on file with the court clerk. In lieu of or in addition to requiring the parties to complete a separate confidential information form, the clerk may collect the information in electronic form. The clerk of the court shall transmit the confidential information form or its data to the division of child support with a copy of the order of child support or paternity order, and may provide copies of the confidential information form or its data and any related findings, decrees, parenting plans, orders, or other documents to the state administrative agency that administers Title IV-A, IV-D, IV-E, or XIX of the federal social security act. In state initiated paternity actions, the parties adjudicated the parents of the child or children shall complete the confidential information form or equivalent or the state's attorney of record may complete that form to the best of the attorney's knowledge.

(8) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under ~~((parts))~~ 45 C.F.R. Parts 302, 303, 304, 305, and 308.

**Sec. 5.** RCW 26.23.110 and 2007 c 143 s 4 are each amended to read as follows:

(1) The department may serve a notice of support owed on a responsible parent when a support order:

(a) Does not state the current and future support obligation as a fixed dollar amount;

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both; or

(c) Provides that the responsible parent is responsible for paying for a portion of uninsured medical costs, copayments, and/or deductibles incurred on behalf of the child, but does not reduce the costs to a fixed dollar amount.

(2) The department may serve a notice of support owed on a parent who has been designated to pay per a support order a portion of uninsured medical costs, copayments, or deductibles incurred on behalf of the child, but only when the support order does not reduce the costs to a fixed dollar amount.

(3) The department may serve a notice of support owed to determine a parent's cash medical support obligation as defined in RCW 26.09.105, if the support order does not set a fixed dollar amount for the cash medical support obligation.

(4) The notice of support owed shall facilitate enforcement of the support order and implement and effectuate the terms of the support order, rather than modify those terms. When the office of support enforcement issues a notice of support owed, the office shall inform the payee under the support order.

~~((4))~~ (5) The notice of support owed shall be served on a responsible parent by personal service or any form of mailing requiring a return receipt. The notice shall be served on the applicant or recipient of services by first-class mail to the last known address. The notice of support owed shall contain an initial finding of the fixed dollar amount of current and future support obligation that should be paid or the fixed dollar amount of the support debt owed under the support order, or both.

~~((5))~~ (6) A parent who objects to the fixed dollar amounts stated in the notice of support owed has twenty days from the date of the service of the notice of support owed to file an application for an adjudicative proceeding or initiate an action in superior court.

~~((6))~~ (7) The notice of support owed shall state that the parent may:

(a) File an application for an adjudicative proceeding governed by chapter 34.05 RCW, the administrative procedure act, in which the parent will be required to appear and show cause why the fixed dollar amount of support debt or current and future support obligation, or both, stated in the notice of support owed is incorrect and should not be ordered; or

(b) Initiate an action in superior court.

~~((7))~~ (8) If either parent does not file an application for an adjudicative proceeding or initiate an action in superior court, the fixed dollar amount of current and future support obligation or support debt, or both, stated in the notice of support owed shall become final and subject to collection action.

~~((8))~~ (9) If an adjudicative proceeding is requested, the department shall mail a copy of the notice of adjudicative proceeding to the parties.

~~((9))~~ (10) If either parent does not initiate an action in superior court, and serve notice of the action on the department and the other party to the support order within the twenty-day period, the parent shall be deemed to have made an election of remedies and shall be required to exhaust administrative remedies under this chapter with judicial review available as provided for in RCW 34.05.510 through 34.05.598.

~~((10))~~ (11) An adjudicative order entered in accordance with this section shall state the basis, rationale, or formula upon which the fixed dollar amounts established in the adjudicative order were based. The fixed dollar amount of current and future support obligation or the amount of the support debt, or both, determined under this section shall be subject to collection under this chapter and other applicable state statutes.

~~((11))~~ (12) The department shall also provide for:

(a) An annual review of the support order if either the office of support enforcement or the parent requests such a review; and

(b) A late adjudicative proceeding if the parent fails to file an application for an adjudicative proceeding in a timely manner under this section.

~~((12))~~ (13) If an annual review or late adjudicative proceeding is requested under subsection ~~((11))~~ (12) of this section, the department shall mail a copy of the notice of adjudicative proceeding to the parties' last known address.

~~((13))~~ (14) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under ~~((parts))~~ 45 C.F.R. Parts 302, 303, 304, 305, and 308.

**Sec. 6.** RCW 74.20A.300 and 1994 c 230 s 22 are each amended to read as follows:

(1) Whenever a support order is entered or modified under this chapter, the department shall require ~~((the responsible))~~ either or both parents to ~~((maintain or provide health insurance coverage))~~ provide medical support for any dependent child, in the nature of health insurance coverage or cash medical support, as provided under RCW 26.09.105.

(2) "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

(3) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable to the department within twenty days of the entry of the order.

(4) A parent required to provide health insurance coverage must notify the department and the other parent when coverage terminates.

(5) Every order requiring a parent to provide health insurance coverage shall be entered in compliance with RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW.

**Sec. 7.** RCW 74.20A.055 and 2007 c 143 s 8 are each amended to read as follows:

(1) The secretary may, if there is no order that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation or pursuant to an establishment of paternity under chapter 26.26 RCW, serve on the responsible parent or parents and custodial parent a notice and finding of financial responsibility requiring the parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. A custodian who has physical custody of a child has the same rights that a custodial parent has under this section.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. The notice may be served upon the custodial parent who is the nonassistance applicant or public assistance recipient by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent.

(3) The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future. The notice and finding shall also include:

(a) A statement of the name of the custodial parent and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent or custodial parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why the terms set forth in the notice should not be ordered;

(d) A statement that, if neither the responsible parent nor the custodial parent files in a timely fashion an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt and amounts due under the notice shall be subject to collection action;

(e) A statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice;

(f) A statement that either or both parents are responsible for providing health insurance for his or her child if coverage that can be extended to cover the child either through private health insurance which is accessible to the child or through coverage that is or becomes available to the parent through employment or is union-related, or for paying a cash medical support obligation if no such coverage is available, as provided under RCW 26.09.105.

(4) A responsible parent or custodial parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection.

(a) If the responsible parent or custodial parent files the application within twenty days, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If both the responsible parent and the custodial parent fail to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent or custodial parent files the application more than twenty days after, but within one year of the date of service, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent or custodial parent files the application more than one year after the date of service, the office of administrative hearings shall schedule an adjudicative proceeding at which the parent who requested the late hearing must show good cause for failure to file a timely application. The filing of the application does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's objection to the notice and determine the support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support

established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The petitioning parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) If the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard, the division of child support may file an application for adjudicative proceeding more than twenty days after the date of service of the notice. The office of administrative hearings shall schedule an adjudicative proceeding and provide notice of the hearing to the responsible parent and the custodial parent. The presiding officer shall determine the support obligation for the entire period covered by the notice, based upon credible evidence presented by the division of child support, the responsible parent, or the custodial parent, or may determine that the support obligation set forth in the notice is correct. The division of child support demonstrates good cause by showing that the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard. The filing of the application by the division of child support does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action.

(f) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the child support schedule and enter written findings of fact supporting the deviation.

(6) If either the responsible parent or the custodial parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an order of default against each party who did not appear and may enter an administrative order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. The parties who appear may enter an agreed settlement or consent order, which may be different than the terms of the department's notice. Any party who appears may choose to proceed to the hearing, after the conclusion of which the presiding officer or reviewing officer may enter an order that is different than the terms stated in the notice, if the obligation is supported by credible evidence presented by any party at the hearing.

(7) The final administrative order establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer.

(9) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005.

Additionally, the department has rule-making authority to implement regulations required under ~~((parts))~~ 45 C.F.R. Parts 302, 303, 304, 305, and 308.

**Sec. 8.** RCW 74.20A.056 and 2007 c 143 s 9 are each amended to read as follows:

(1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state registrar of vital statistics before July 1, 1997, the division of child support may serve a notice and finding of parental responsibility on him and the custodial parent. Procedures for and responsibility resulting from acknowledgments filed after July 1, 1997, are in subsections (8) and (9) of this section. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested, on the alleged father. The custodial parent shall be served by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent. The notice shall have attached to it a copy of the affidavit or certification of birth record information advising of the existence of a filed affidavit, provided by the state registrar of vital statistics, and shall state that:

(a) Either or both parents are responsible for providing health insurance for their child either through private health insurance which is accessible to the child or through coverage that if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related, or for paying a cash medical support obligation if no such coverage is available, as provided under RCW 26.09.105;

(b) The alleged father or custodial parent may file an application for an adjudicative proceeding at which they both will be required to appear and show cause why the amount stated in the notice as to support is incorrect and should not be ordered;

(c) An alleged father or mother, if she is also the custodial parent, may request that a blood or genetic test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the division of child support initiate an action in superior court to determine the existence of the parent-child relationship; and

(d) If neither the alleged father nor the custodial parent requests that a blood or genetic test be administered or files an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist.

(2) An alleged father or custodial parent who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood or genetic tests if advanced by the department. A custodian who is not the parent of a child and who has physical custody of a child has the same notice and hearing rights that a custodial parent has under this section.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the alleged father is later found not to be a responsible parent.

(4) An alleged father or the mother, if she is also the custodial parent, may request that a blood or genetic test be administered at any time. The request for testing shall be in writing, or as the department may specify by rule, and served on the division of child support. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's and mother's, if she is also the custodial parent, last known address.

(5) If the test excludes the alleged father from being a natural parent, the division of child support shall file a copy of the results with the state registrar of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state registrar of vital statistics shall remove the alleged father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate, or any other name which the mother may select.

(6) The alleged father or mother, if she is also the custodial parent, may, within twenty days after the date of receipt of the test results, request the division of child support to initiate an action under RCW 26.26.500 through 26.26.630 to determine the existence of the parent-child relationship. If the division of child support initiates a superior court action at the request of the alleged father or mother and the decision of the court is that the alleged father is a natural parent, the parent who requested the test shall be liable for court costs incurred.

(7) If the alleged father or mother, if she is also the custodial parent, does not request the division of child support to initiate a superior court action, or fails to appear and cooperate with blood or genetic testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.500 through 26.26.630.

(8)(a) Subsections (1) through (7) of this section do not apply to acknowledgments of paternity filed with the state registrar of vital statistics after July 1, 1997.

(b) If an acknowledged father has signed an acknowledgment of paternity that has been filed with the state registrar of vital statistics after July 1, 1997:

(i) The division of child support may serve a notice and finding of financial responsibility under RCW 74.20A.055 based on the acknowledgment. The division of child support shall attach a copy of the acknowledgment or certification of the birth record information advising of the existence of a filed acknowledgment of paternity to the notice;

(ii) The notice shall include a statement that the acknowledged father or any other signatory may commence a proceeding in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335;

(iii) A statement that either or both parents are responsible for providing health insurance for his or her child if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105; and

(iv) The party commencing the action to rescind or challenge the acknowledgment or denial must serve notice on the division of child

support and the office of the prosecuting attorney in the county in which the proceeding is commenced. Commencement of a proceeding to rescind or challenge the acknowledgment or denial stays the establishment of the notice and finding of financial responsibility, if the notice has not yet become a final order.

(c) If neither the acknowledged father nor the other party to the notice files an application for an adjudicative proceeding or the signatories to the acknowledgment or denial do not commence a proceeding to rescind or challenge the acknowledgment of paternity, the amount of support stated in the notice and finding of financial responsibility becomes final, subject only to a subsequent determination under RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist. The division of child support does not refund nor return any amounts collected under a notice that becomes final under this section or RCW 74.20A.055, even if a court later determines that the acknowledgment is void.

(d) An acknowledged father or other party to the notice who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged father is later found not to be a responsible parent.

(e) If neither the acknowledged father nor the custodial parent requests an adjudicative proceeding, or if no timely action is brought to rescind or challenge the acknowledgment or denial after service of the notice, the notice of financial responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.500 through 26.26.630.

(9) Acknowledgments of paternity that are filed after July 1, 1997, are subject to requirements of chapters 26.26, the uniform parentage act, and 70.58 RCW.

(10) The department and the department of health may adopt rules to implement the requirements under this section.

(11) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under ((parts)) 45 C.F.R. Parts 302, 303, 304, 305, and 308.

**Sec. 9.** RCW 74.20A.059 and 1991 c 367 s 47 are each amended to read as follows:

(1) The department, the physical custodian, or the responsible parent may petition for a prospective modification of a final administrative order if:

(a) The administrative order has not been superseded by a superior court order; and

(b) There has been a substantial change of circumstances, except as provided under RCW 74.20A.055(4)(d).

(2) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child; or

(b) If a party requests an adjustment in an order for child support that was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based; or

(c) If a child is a full-time student and reasonably expected to complete secondary school or the equivalent level of vocational or technical training before the child becomes nineteen years of age upon a finding that there is a need to extend support beyond the eighteenth birthday.

(3) An order may be modified without showing a substantial change of circumstances if the requested modification is to:

(a) Require (~~health insurance coverage~~) medical support under RCW 26.09.105 for a child covered by the order; or

(b) Modify an existing order for health insurance coverage.

(4) Support orders may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances.

(5)(a) All administrative orders entered on, before, or after September 1, 1991, may be modified based upon changes in the child support schedule established in chapter 26.19 RCW without a substantial change of circumstances. The petition may be filed based on changes in the child support schedule after twelve months has expired from the entry of the administrative order or the most recent modification order setting child support, whichever is later. However, if a party is granted relief under this provision, twenty-four months must pass before another petition for modification may be filed pursuant to subsection (4) of this section.

(b) If, pursuant to subsection (4) of this section or (a) of this subsection, the order modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the change may be implemented in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a petition for modification under subsection (4) of this section may be filed.

(6) An increase in the wage or salary of the parent or custodian who is receiving the support transfer payments (~~as defined in section 24 of this act~~) is not a substantial change in circumstances for purposes of modification under subsection (1)(b) of this section. An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(7) The department shall file the petition and a supporting affidavit with the secretary or the secretary's designee when the department petitions for modification.

(8) The responsible parent or the physical custodian shall follow the procedures in this chapter for filing an application for an adjudicative proceeding to petition for modification.

(9) Upon the filing of a proper petition or application, the secretary or the secretary's designee shall issue an order directing each party to appear and show cause why the order should not be modified.

(10) If the presiding or reviewing officer finds a modification is appropriate, the officer shall modify the order and set current and future support under chapter 26.19 RCW.

**NEW SECTION. Sec. 10.** This act takes effect October 1, 2009."

On page 1, line 1 of the title, after "obligations;" strike the remainder of the title and insert "amending RCW 26.09.105, 26.18.170, 26.18.180, 26.23.050, 26.23.110, 74.20A.300, 74.20A.055, 74.20A.056, and 74.20A.059; and providing an effective date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House did not concur in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1845 and asked the Senate to recede therefrom.

#### MESSAGE FROM THE SENATE

April 2, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1869 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 70.01 RCW to read as follows:

(1) Health care providers licensed under Title 18 RCW and health care facilities licensed under Title 70 RCW, shall provide the following to a patient upon request:

(a) An estimate of fees and charges related to a specific service, visit, or stay; and

(b) Information regarding other types of fees or charges a patient may receive in conjunction with their visit to the provider or facility. Hospitals licensed under chapter 70.41 RCW may fulfill this requirement by providing a statement and contact information as described in RCW 70.41.400.

(2) Providers and facilities listed in subsection (1) of this section may, after disclosing estimated charges and fees to a patient, refer the patient to the patient's insurer, if applicable, for specific information on the insurer's charges and fees, any cost-sharing responsibilities required of the patient, and the network status of ancillary providers who may or may not share the same network status as the provider or facility.

(3) Except for hospitals licensed under chapter 70.41 RCW, providers and facilities listed in subsection (1) of this section must post a notice in a location visible to all patients that says, "You have the right to know the estimated cost of your health services before you consent to the services. Please do not hesitate to ask for information."

**NEW SECTION. Sec. 2.** A new section is added to chapter 70.41 RCW to read as follows:

Hospitals licensed under this chapter shall provide notice to patients undergoing scheduled elective procedures containing at least the following language: "You may request information about the estimated charges of your hospital services. Please do not hesitate to ask for information.""

On page 1, line 1 of the title, after "information;" strike the remainder of the title and insert "adding a new section to chapter 70.01 RCW; and adding a new section to chapter 70.41 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House did not concur in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1869, and asked the Senate to recede therefrom.

**MESSAGE FROM THE SENATE**

April 14, 2009

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 1379 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature recognizes that the state, counties, and cities have moratoria authority granted through constitutional and statutory provisions and that this authority, when properly exercised, is an important aspect of complying with environmental stewardship and protection requirements.

Recognizing the fundamental role and value of properly exercised moratoria, the legislature intends to establish new moratoria procedures and to affirm moratoria authority that local governments have and may exercise and when implementing the shoreline management act, while recognizing the legitimate interests of existing shoreline related developments during the period of interim moratoria.

**NEW SECTION. Sec. 2.** A new section is added to chapter 90.58 RCW to read as follows:

(1) Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement this chapter.

(2)(a) A local government adopting a moratorium or control under this section must:

(i) Hold a public hearing on the moratorium or control;

(ii) Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(iii) Notify the department of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing required by this subsection;

(iv) Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

(b) The public hearing required by this section must be held within sixty days of the adoption of the moratorium or control.

(3) A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

(4) Nothing in this section may be construed to modify county and city moratoria powers conferred outside this chapter.

**NEW SECTION. Sec. 3.** (1) The legislature finds that a special height moratorium is necessary along the shoreline known as the "Olympia Isthmus" located in the city of Olympia between Capitol Lake and Budd Inlet, which should hereinafter be designated a "shoreline of statewide significance."

(2) The legislature further finds that:

(a) The shoreline along Capitol Lake is part of the Heritage park area of the state capitol campus, in which the state of Washington has invested millions of dollars to improve and make available for statewide public use, education, and appreciation. It is also an important element of the scenic, historic vista northward from the capitol campus, in which the state of Washington and nonprofit organizations have invested millions of dollars to construct excellent public viewing opportunities of the north capitol campus and other sights of both statewide and national significance;

(b) The state of Washington is continuing to invest millions of dollars in water quality improvements along both Capitol Lake and Budd Inlet shorelines;

(c) The Olympia Isthmus as a whole is historically significant, fragile, and a major contributor to significant changes to the natural estuary area of the area. The Olympia Isthmus was constructed by fill in early 1911, with the reflecting lake created in the 1950s when the dam was constructed at what is now called the Deschutes spillway;

(d) The vista is an integral part of the design of the state capitol campus. The state's founders sited the capitol campus in its location principally to take advantage of this expansive vista. The vista: Is representative of much of the physical characteristics of very large areas of the state; provides a visual and physical connection between the capitol and the Puget Sound; is inspirational; and promotes an appreciation of the scenic grandeur and rich natural resources of our state; and

(e) The Washington state capitol, together with its spectacular location, is a state and national treasure that has been passed down from one generation to another.

(3) The legislature intends that the Olympia Isthmus be declared to be a shoreline of statewide significance through the shoreline management act to advance the public interest and to protect public investments.

(4) This state and national treasure has been passed down from one generation to another. It includes public vistas of Budd Inlet, south Puget Sound, the Olympic mountains, and a broad range of forested hills.

(5) Therefore, it is the intent of the legislature to take steps to protect this state and national scenic and historic asset.

**Sec. 4.** RCW 90.58.030 and 2007 c 328 s 1 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

(a) "Department" means the department of ecology;

(b) "Director" means the director of the department of ecology;

(c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) "~~(Hearing[s])~~ Hearings board" means the ~~((shoreline[s]))~~ shorelines hearings board established by this chapter.



## (2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark 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 all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

(B) Birch Bay--from Point Whitehorn to Birch Point,

(C) Hood Canal--from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point, ~~((and))~~

(E) Padilla Bay--from March Point to William Point, and

(F) Budd Inlet--from the northwest extension of Capitol Waterway in Olympia to the Deschutes spillway, and including the historic shoreline of Budd Inlet contained in Capitol Lake from the Deschutes spillway to the southwest extension of Capitol Waterway;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(f)(ii) are not subject to additional regulations under this chapter;

(g) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

## (3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion

of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW.

**NEW SECTION. Sec. 5.** A new section is added to chapter 35A.63 RCW to read as follows:

(1) A special height moratorium is created on the Olympia Isthmus in the area adjacent to the historic Budd Inlet named in RCW 90.58.030 in order to protect the scenic beauty of the state capitol campus for the citizens of this state and for out-of-state visitors.

(2) The Olympia Isthmus special height moratorium is located as follows: The Olympia Isthmus--from the western boundary of Capitol Waterway in Olympia proceeding west to the shoreline of the Deschutes spillway bounded by Capitol Lake shoreline and Budd Inlet shoreline.

(3) The maximum allowable height for a new or remodeled building or structure located within the Olympia Isthmus special height moratorium is thirty-five feet. This section only applies to new construction, and remodeling or restructuring that affects the height of the building. This section is not intended to prevent normal repair, maintenance, and internal remodeling of any building already exceeding the height limitation.

**NEW SECTION. Sec. 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 7.** This act is necessary for the immediate preservation of the public peace, health, or safety, or

support of the state government and its existing public institutions, and takes effect immediately."

On page 1, line 2 of the title, after "act;" strike the remainder of the title and insert "amending RCW 90.58.030; adding a new section to chapter 90.58 RCW; adding a new section to chapter 35A.63 RCW; creating new sections; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

### POINT OF ORDER

Representative Ericksen requested a scope and object ruling on the Senate amendment to Engrossed Substitute House Bill No. 1379.

### SPEAKER'S RULING

Mr. Speaker: (Representative Morris presiding): "Engrossed Substitute House Bill No. 1379, as passed by the House, authorized local governments to adopt moratoria and temporary controls necessary to implement the shoreline management act, specified procedural requirements for their adoption, and limited their duration.

The Senate amendment designates a specific area of shoreline as a shoreline of statewide significance and imposes a permanent height restriction on the construction of new buildings and structures on the property.

The Senate amendment is unrelated to the purpose of the bill as it passed the House – to authorize and regulate the adoption of temporary controls under the shoreline management act – and clearly exceeds the bill's scope and object.

Representative Ericksen, your point of order is well taken."

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House did not concur in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1379 and asked the Senate to recede therefrom.

### MESSAGE FROM THE SENATE

April 13, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1329 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that, as of 2009, the challenges posed by low wages and lack of training that the legislature identified in enacting the child care career and wage ladder persist, and the availability of quality child care in the state continues to suffer. The legislature intends to address these problems by creating the possibility for a new relationship between child care center directors and workers and the state. Child care center directors and workers are to be given the opportunity to work collectively to improve standards in their profession and to expand opportunities for educational advancement to ensure continuous quality improvement in the delivery of early learning services. Family child care providers in the state have recently been given a similar opportunity, and the results of their efforts have improved standards and quality for that segment of the child care industry.

The legislature intends to create a new type of collective bargaining for these directors and workers whereby they can come together and bargain with the state over matters within the state's purview to improve the quality of child care for the state's families. Unlike traditional collective bargaining, this new approach will afford these directors and workers the opportunity to bargain with the state only over the state's support for child care centers, a matter of common concern to both directors and workers. Specific terms and conditions of employment at individual centers, which are the subjects of traditional collective bargaining between employers and their employees, fall outside the limited scope of bargaining defined by this act. Accordingly, traditional policy concerns over supervisors and employees being organized into a common bargaining unit are inapplicable. Sharing a community of interest in the subjects of bargaining enables directors and workers to work side by side in the same bargaining unit for common goals.

All child care center directors and workers will equally be able to maintain full membership in the organization that represents them in their efforts to improve the quality of child care they provide to the state's children. This new bargaining relationship does not intrude in any manner upon those relationships governed by the national labor relations act (29 U.S.C. Sec. 151 et seq.). Child care center directors and workers do not forfeit their rights under the national labor relations act by becoming members of an organization that represents them in their dealings with the state. Under the national labor relations act, an organization that represents child care center directors and workers in bargaining with the state under this act is precluded from representing workers seeking to engage in traditional collective bargaining with their employer over specific terms and conditions of employment at individual child care centers.

Nothing in this act is intended to create any unfunded mandates or financial obligations on child care centers covered by this act.

**Sec. 2.** RCW 41.56.028 and 2007 c 278 s 2 are each amended to read as follows:

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to family child care providers and to child care center directors and workers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of family child care providers and of child care center directors and workers who, solely for the purposes of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW.

(2) This chapter governs the collective bargaining relationship between the governor and family child care providers and between the governor and child care center directors and workers, except as follows:

(a) ~~((A statewide unit of all family child care providers is))~~ The only units appropriate for purposes of collective bargaining under RCW 41.56.060 are:

(i) A statewide unit for family child care providers; and  
 (ii) The units for child care center directors and workers determined by the commission which shall conform to the unit requested in the application for certification as the bargaining representative if consistent with the terms of this act. In determining the units, the commission shall include in the same unit all child care center directors and workers employed at child care centers located in department of social and health services regions existing on the effective date of this section, and may group together regions to minimize the number of units.

(b) The exclusive bargaining representative of family child care providers or of child care center directors and workers in the units specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070, except that:

(i) In the initial election conducted under chapter 54, Laws of 2006, or this act, if more than one labor organization is on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be held;

(ii) To show at least thirty percent representation within a unit to accompany a request for an initial election under this act, the written proof of representation is valid only if collected not more than two years prior to the date the request is filed with the commission; and

(iii) The initial election may not occur before July 1, 2010.

(c) For the exclusive bargaining representatives certified by the commission to represent units of child care center directors and workers, negotiations of a collective bargaining agreement shall be conducted jointly by all certified representatives. The representatives shall bargain for one collective bargaining agreement covering all of the represented child care center directors and workers.

(d)(i) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for family child care providers under this section shall be limited solely to:

~~((+))~~ (A) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; ~~((+))~~ (B) health and welfare benefits; ~~((+))~~ (C) professional development and training; ~~((+))~~ (D) labor-management committees; ~~((+))~~ (E) grievance procedures; and ~~((+))~~ (F) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

~~((+))~~ (ii) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the matters subject to bargaining under this section shall be within the purview of the state and within the community of interest of child care center directors and workers.

The public employer is: (A) Required to bargain over the manner and rate of subsidy and reimbursement, so long as any agreement is consistent with the provisions of any quality rating and improvement system; (B) permitted, but not required, to bargain over: (I) Funding for professional development and training; (II) mechanisms and funding to improve the access of child care centers to health care insurance and other benefit programs; (III) other economic support for child care centers; and (IV) grievance procedures to resolve disputes arising out of the interpretation or application of the collective bargaining agreement; and (C) prohibited from bargaining over retirement benefits. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(e) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the exclusive bargaining representative of family child care providers or the exclusive bargaining representative or representatives of child care center directors and workers, negotiations shall be commenced initially upon certification of an exclusive bargaining representative under (a) of this subsection and, thereafter, by February 1st of any even-numbered year; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of ~~((the))~~ an arbitrated collective bargaining agreement for

family child care providers or the subsidy and reimbursement provisions of an arbitrated collective bargaining agreement for child care center directors and workers, is not binding on the state.

~~((+))~~ (f) Nothing in chapter 54, Laws of 2006, or this act grants family child care providers ~~((do not have))~~ and child care center directors and workers the right to strike.

(3) Family child care providers and child care center directors and workers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any purpose. This section applies only to the governance of the collective bargaining relationship between the employer and family child care providers and between the employer and child care center directors and workers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The parents' or legal guardians' right to choose and terminate the services of any family child care provider or any child care center that provides care for their child or children;

(b) The child care centers' right to choose, direct, and terminate the services of any child care worker who provides care in the center, and unless otherwise provided in this chapter, to manage and operate facilities and programs, including rights to plan, direct, and control the use of resources;

(c) The rights of employers and employees under the national labor relations act, 29 U.S.C. Sec. 151 et seq.;

(d) The ~~((secretary of the department of social and health services' right to adopt requirements under RCW 74.15.030))~~ director of the department of early learning's right to adopt requirements under chapter 43.215 RCW, except for requirements related to grievance procedures and collective negotiations on personnel matters as specified in subsection (2)~~((+))~~ (d) of this section;

~~((+))~~ (e) Chapter 26.44 or 43.215 RCW~~((;))~~ or RCW 43.43.832~~((;))~~ or 43.20A.205~~((, and 74.15.130))~~; and

~~((+))~~ (f) The legislature's right to make programmatic modifications to the delivery of state services through child care subsidy programs, including standards of eligibility of parents, legal guardians, ~~((and))~~ family child care providers and child care centers participating in child care subsidy programs, ~~((and))~~ the nature of services provided, and the legislature's right to determine standards for professional development and training, quality criteria, ratings through programs such as a quality rating system, and incentives for improving quality. The governor shall not enter into, extend, or renew any agreement under this section that does not expressly reserve the legislative rights described in this subsection (4)~~((+))~~ (f).

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, ~~((a))~~ requests for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement for family child care providers and a collective bargaining agreement for child care center directors and workers entered into under this section or for legislation necessary to implement such agreements.

(6) ~~((A))~~ Requests for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement for family child care providers and a collective bargaining agreement for child care center directors and workers entered into under this section shall not be submitted by the governor to the legislature unless such ~~((request has))~~ requests have been:

(a) Submitted to the director of financial management by October 1st before the legislative session at which the request is to be considered, except that, for initial negotiations under this section for

family child care providers, the request must be submitted by November 15, 2006, and for child care center directors and workers, the request may not be submitted before July 1, 2011; ~~((and))~~

(b) For family child care providers, certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under this section; and

(c) For child care center directors and workers, certified by the director of financial management as being financially feasible for the state. If the director of financial management does not certify those provisions of the decision as feasible financially for the state, those provisions of the decision are not binding on the governor. To the extent that the decision is not binding on the governor, RCW 41.56.480 does not apply.

(7) The legislature must approve or reject the submission of the requests for funds as a whole. If the legislature rejects or fails to act on the submissions, any such agreements will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreements.

(8) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and benefit provisions of ~~((any))~~ a collective bargaining agreement for family child care providers and a collective bargaining agreement for child care center directors and workers and, upon completion of negotiations, advise the committee on the elements of the agreements and on any legislation necessary to implement such agreements.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in subsection (4)~~((d))~~ (f) of this section.

(10) If, after the compensation and benefit provisions of ~~((an))~~ a collective bargaining agreement for family child care providers or for a collective bargaining agreement for child care center directors and workers are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of family child care providers and their exclusive bargaining representative and of child care center directors and workers and their exclusive bargaining representatives to the extent such activities are authorized by this chapter.

**Sec. 3.** RCW 41.56.030 and 2007 c 184 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term

of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(9) "Home care quality authority" means the authority under chapter 74.39A RCW.

(10) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(11) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340 or 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(12) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the state under ~~((RCW 74.15.030))~~ chapter 43.215 RCW or is exempt from licensing under chapter ~~((74.15))~~ 43.215 RCW.

(13) "Adult family home provider" means a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(14) "Child care center directors and workers" includes all employees of child care centers who work on-site at the centers. "Child care center directors and workers" also includes owners of child care centers.

(15) "Child care center" means a child care center licensed by the state under chapter 43.215 RCW that has at least four child care slots filled by children for whom it receives a child care subsidy and which chooses to participate in collective bargaining under this act by filing a notice of intent under section 4 of this act.

**NEW SECTION. Sec. 4.** A new section is added to chapter 41.56 RCW to read as follows:

A child care center licensed by the state under chapter 43.215 RCW may participate in collective bargaining under this act if the child care center files a notice of intent to opt in with the commission. A child care center that does not file a notice of intent with the commission under this section may not be included in a bargaining unit under this act.

**Sec. 5.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read as follows:

(1) Upon the written authorization of an individual provider, a family child care provider, or an adult family home provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to subsection ~~((3))~~ (4) of this section, deduct from the payments to an individual provider, a family child care provider, or an adult family home provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(2) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers, family child care providers, or adult family home providers enter into a collective bargaining agreement that:

(a) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to subsection ~~((3))~~ (4) of this section, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(b) Includes requirements for deductions of payments other than the deduction under (a) of this subsection, the state, as payor, but not as the employer, shall, subject to subsection ~~((3))~~ (4) of this section,

make such deductions upon written authorization of the individual provider, family child care provider, or adult family home provider.

(3) In lieu of the deductions authorized under subsections (1) and (2) of this section, and the union security provisions authorized under RCW 41.56.122, the governor and the exclusive representative of a bargaining unit of child care center directors and workers shall agree to a mechanism for collecting a representation fee to be paid to the exclusive representative for the costs of representation of child care center directors and workers as provided in this chapter. The state shall deduct the representation fee from the monthly amount of the child care subsidy due to a child care center and transmit the representation fee to the secretary of the exclusive bargaining representative. However:

(a) Any agreement to pay a representation fee must safeguard the child care center owner's and operator's rights of nonassociation based on bona fide religious tenets or teachings of a church or other religious body of which the owner or operator is a member. The child care center owner or operator shall pay an amount equivalent to the representation fee to a nonreligious charity or to another charitable organization; and

(b) The child care center shall furnish written proof that such payment has been made.

(4)(a) The initial additional costs to the state in making deductions ~~((from the payments to individual providers, family child care providers, and adult family home providers))~~ under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(b) The allocation of ongoing additional costs to the state in making deductions ~~((from the payments to individual providers, family child care providers, or adult family home providers))~~ under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the governor unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargaining representative and the governor, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300, 41.56.028, or 41.56.029, as applicable, the ongoing additional costs to the state in making deductions ~~((from the payments to individual providers, family child care providers, or adult family home providers))~~ under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

~~((4))~~ (5) The governor and the exclusive bargaining representative of a bargaining unit of family child care providers may not enter into a collective bargaining agreement that contains a union security provision unless the agreement contains a process, to be administered by the exclusive bargaining representative of a bargaining unit of family child care providers, for hardship dispensation for license-exempt family child care providers who are also temporary assistance for needy families recipients or WorkFirst participants.

**Sec. 6.** RCW 41.56.465 and 2007 c 278 s 1 are each amended to read as follows:

(1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) The average consumer prices for goods and services, commonly known as the cost of living;

(d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and

(e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

(3) For employees listed in RCW 41.56.030(7) (e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

(4) For ~~((employees))~~ family child care providers listed in RCW 41.56.028:

(a) The panel shall also consider:

(i) A comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities, along the west coast of the United States; and

(ii) The financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) The public's interest in reducing turnover and increasing retention of child care providers;

(ii) The state's interest in promoting, through education and training, a stable child care workforce to provide quality and reliable child care from all providers throughout the state; and

(iii) In addition, for employees exempt from licensing under chapter ~~((74.15))~~ 43.215 RCW, the state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(5) For child care center directors and workers listed in RCW 41.56.028, the panel shall also consider:

(a) A comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities, along the west coast of the United States; and

(b) The financial ability of the state to pay for a collective bargaining agreement.

(6) For employees listed in RCW 74.39A.270:

(a) The panel shall consider:

(i) A comparison of wages, hours, and conditions of employment of publicly reimbursed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States; and

(ii) The financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) A comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States;

(ii) The state's interest in promoting a stable long-term care workforce to provide quality and reliable care to vulnerable elderly and disabled recipients;

(iii) The state's interest in ensuring access to affordable, quality health care for all state citizens; and

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

~~((6))~~ (7) Subsections (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW.

**Sec. 7.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read as follows:

Individual providers, as defined in RCW 74.39A.240, family child care providers, as defined in RCW 41.56.030, child care center directors and workers, as defined in RCW 41.56.030, and adult family home providers, as defined in RCW 41.56.030, are not employees of the state or any of its political subdivisions and are specifically and entirely excluded from all provisions of this title, except as provided in RCW 74.39A.270, 41.56.028, and 41.56.029.

**Sec. 8.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read as follows:

RCW 43.01.040 through 43.01.044 do not apply to individual providers under RCW 74.39A.220 through 74.39A.300, family child care providers under RCW 41.56.028, child care center directors and workers under RCW 41.56.028, or adult family home providers under RCW 41.56.029.

**NEW SECTION. Sec. 9.** A new section is added to chapter 43.215 RCW to read as follows:

(1) Every child care center shall provide to the department a list of the names and addresses of all current child care center directors and workers, as defined in RCW 41.56.030, annually by January 30th, except that initially the lists shall be provided within thirty days of the effective date of this section.

(2) The department shall, upon request, provide to a labor organization seeking to organize child care center directors and workers, a list of all directors and workers in the unit that the organization seeks to organize. The list shall contain the information collected with regard to the directors and workers pursuant to subsection (1) of this section.

(3) A labor organization receiving information under subsection (2) of this section may not release that information to any other party and may only use that information for collective bargaining and for the purposes specified in subsection (2) of this section.

**Sec. 10.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 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) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child day care provider who regularly provides child day care and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(i) Any agency having been in operation in this state ten years before June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(j) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) An agency that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Child care center directors and workers" means the same as in RCW 41.56.030.

~~(5)~~ (5) "Department" means the department of early learning.

~~((5))~~ (6) "Director" means the director of the department.

~~((6))~~ (7) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

~~((7))~~ (8) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

~~((8))~~ (9) "Family child care licensee" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) does not receive child care subsidies; and (c) is licensed by the state under RCW 43.215.200.

(10) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

~~((9))~~ (11) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

**Sec. 11.** RCW 43.215.350 and 2007 c 17 s 15 are each amended to read as follows:

The director shall have the power and it shall be the director's duty to engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with:

(1) The exclusive representative of the unit of family child care licensees selected in accordance with RCW 43.215.355 and with other affected interests before adopting requirements that affect family child care licensees; and

(2) The exclusive representative or representatives of the unit or units of child care center directors and workers selected in accordance with RCW 41.56.028 and with other affected interests before adopting requirements that affect child care center directors and workers.

**Sec. 12.** RCW 74.15.020 and 2007 c 412 s 1 are each amended to read as follows:

For the purpose of this chapter and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the



duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(j) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons,

and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(v) Relatives, as named in (i), (ii), (iii), or (iv) of this subsection (2)(a), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

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

(4) ~~("Family child care licensee" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider for periods of less than twenty-four hours or, if~~

necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) does not receive child care subsidies; and (c) is licensed by the state under RCW 74.15.030.

~~((5))~~ (5) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

~~((6))~~ (5) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

~~((7))~~ (6) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

~~((8))~~ (7) "Secretary" means the secretary of social and health services.

~~((9))~~ (8) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

~~((10))~~ (9) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs.

**NEW SECTION. Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 14.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."

On page 1, line 3 of the title, after "workers;" strike the remainder of the title and insert "amending RCW 41.56.028, 41.56.030, 41.56.113, 41.56.465, 41.04.810, 43.01.047, 43.215.350, and 74.15.020; reenacting and amending RCW 43.215.010; adding a new section to chapter 41.56 RCW; adding a new section to chapter 43.215 RCW; and creating new sections."

Beginning on page 1, line 5 of the amendment, after "persist" strike all material through "centers" on page 2, line 17 and insert ". The legislature intends to address these problems by creating the possibility for a new relationship between child care center directors and workers and the state. Child care center directors and workers are to be given the opportunity to work collectively to improve standards in their profession and to expand opportunities for

educational advancement to ensure continuous quality improvement in the delivery of early learning services. Family child care providers in the state have recently been given a similar opportunity, and the results of their efforts have improved standards and quality for that segment of the child care industry.

The legislature intends to create a new type of collective bargaining for these directors and workers whereby they can come together and bargain with the state over matters within the state's purview to improve the quality of child care for the state's families. Unlike traditional collective bargaining, this new approach will afford these directors and workers the opportunity to bargain with the state only over the state's support for child care centers, a matter of common concern to both directors and workers. Specific terms and conditions of employment at individual centers, which are the subjects of traditional collective bargaining between employers and their employees, fall outside the limited scope of bargaining defined by this act. Accordingly, traditional policy concerns over supervisors and employees being organized into a common bargaining unit are inapplicable. Sharing a community of interest in the subjects of bargaining enables directors and workers to work side by side in the same bargaining unit for common goals.

This new approach to collective bargaining is available only to center directors and workers who file a notice of intent to participate in the initial opt in phase under section 4 of this act. This new bargaining relationship does not intrude in any manner upon those relationships governed by the national labor relations act (29 U.S.C. Sec. 151 et seq.). Child care center directors and workers do not forfeit their rights under the national labor relations act by becoming members of an organization that represents them in their dealings with the state. Under the national labor relations act, an organization that represents child care center directors and workers in bargaining with the state under this act is precluded from representing workers seeking to engage in traditional collective bargaining with their employer over specific terms and conditions of employment at individual child care centers."

On page 2, line 24 of the amendment, after "workers" insert "who choose to opt in under section 4 of this act"

On page 3, line 4 of the amendment, after "(ii)" strike all material through "units" on line 12 and insert "A statewide unit for child care center directors and workers"

On page 3, beginning on line 26 of the amendment, after "election" strike all material through "(d)" on line 34 and insert "under this act may not occur before the opt in period has concluded on November 1, 2010.

(c)"

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

On page 4, line 10 of the amendment, after "section" insert "for child care center directors and workers"

On page 4, line 18 of the amendment, after "programs;" insert "and"

On page 4, beginning on line 18 of the amendment, after "(III)" strike all material through "(IV)" on line 19

On page 4, beginning on line 29 of the amendment, after "providers" strike all material through "workers" on line 30

On page 4, line 33 of the amendment, after "year;" strike "and" and insert "(and))"

On page 4, line 34 of the amendment, after "(ii)" insert "With respect to commencement of negotiations between the governor and the exclusive bargaining representative or representatives of child care center directors and workers under (a) of this subsection, negotiations may not commence before July 1, 2011, and thereafter

must commence by February 1st of any even-numbered year; and  
(iii)"

On page 6, line 27 of the amendment, after "request" strike "may not be submitted before July" and insert "must be submitted by October"

On page 10, beginning on line 19 of the amendment, after "(15)" strike all material through "act." on line 23 and insert "(a) "Child care center" means a child care center licensed by the state under RCW 43.215.500 through 43.215.545 that has at least one child care slot filled by a child for whom it receives a child care subsidy.

(b) "Child care center" does not include a child care center:

(i) Operated directly by another unit of government or a tribe;

(ii) Operated by an individual, partnership, profit or nonprofit corporation, or other entity that operates ten or more child care centers statewide; or

(iii) Operated by a local nonprofit organization whose primary mission is to provide social services, including serving children and families, and that pays membership dues or assessments to either: (A) A national organization, exempt from income tax under section 501(c)(3) of the internal revenue code, with more than three million dollars in membership dues and assessments annually, as reported to the internal revenue service; or (B) a regional council that is affiliated with a national organization, exempt from income tax under section 501(c)(3) of the internal revenue code, with more than two hundred affiliates."

On page 10, beginning on line 26 of the amendment, strike all material through "act." on line 31 and insert "(1) A child care center may participate in collective bargaining under this act if the child care center owner or director if there is no owner files a notice of intent to opt in with the commission. The notice of intent must: Include the names and addresses of that child care center's owners, directors, and workers; include written authorization cards signed by a majority of owners, directors, and workers employed at the center indicating their desire to opt in; and be filed after June 30, 2010, and before November 2, 2010.

(2) A child care center that does not file a notice of intent with the commission may not be included in a bargaining unit under this act.

(3) The commission must, upon request, provide to a labor organization seeking to organize child care center directors and workers, a list, including names and addresses, of the child care center owners, directors, and workers provided in notices of intent submitted under subsection (1) of this section."

Beginning on page 11, line 23 of the amendment, after "(3)" strike all material through "organization;" on page 12, line 3 and insert "In lieu of the deductions authorized under subsections (1) and (2) of this section, and the union security provisions authorized under RCW 41.56.122, the state shall deduct from the monthly amount of the child care subsidy due to a child care center a monthly representation fee, as certified by the secretary of the exclusive bargaining representative, for the costs of representation of child care center directors and workers, and transmit the representation fee to the secretary of the exclusive bargaining representative. However:

(a) Any agreement to pay a representation fee must safeguard the child care center owner's or director's rights of nonassociation based on bona fide religious tenets or teachings of a church or other religious body of which the owner or director is a member. The child care center owner or director shall pay an amount equivalent to the representation fee to a nonreligious charity or to another charitable organization;"

Beginning on page 15, line 25 of the amendment, strike all of section 9

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

On page 23, after line 35 of the amendment, insert the following:  
**NEW SECTION. Sec. 13.** A new section is added to chapter 43.131 RCW to read as follows:

This act terminates June 30, 2014, as provided in section 14 of this act.

**NEW SECTION. Sec. 14.** A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2015:

(1) Section 1 of this act;

(2) Section 2 of this act;

(3) Section 3 of this act;

(4) Section 4 of this act;

(5) Section 5 of this act;

(6) Section 6 of this act;

(7) Section 7 of this act;

(8) Section 8 of this act;

(9) Section 9 of this act;

(10) Section 10 of this act;

(11) Section 11 of this act; and

(12) Section 12 of this act."

On page 24, line 17 of the title amendment, after "41.56 RCW;" strike the remainder of the title and insert "adding new sections to chapter 43.131 RCW; creating new sections; and providing an effective date."

On page 1, line 7 of the amendment, after "suffer." strike all material through "chapter." On page 7, line 33 and insert the following:

"Recognizing that family child care providers have been granted the ability to collectively bargain with the state to improve standards in their profession and to expand opportunities for educational advancement to ensure continuous quality improvement in the delivery of early learning services, it has been suggested that the legislature grant similar bargaining rights to child care center directors and workers. However, because of current economic realities, it is difficult to award such rights before thoroughly studying whether this will, in fact, improve the working conditions of child care center directors and workers.

The legislature intends, therefore, to study the effects of the family child care provider system and whether providing equivalent collective bargaining opportunities to child care center directors and workers will lead to better training and opportunities for child care workers and better early learning opportunities for the children in their care. The legislature further intends that the results of this study be delivered to a joint legislative task force which will investigate methods to raise the subsidy through legislation.

**NEW SECTION. Sec. 2.** (1) The department of early learning must study issues relating to increasing the child care subsidy and reimbursement rates for child care centers licensed under chapter 43.125 RCW. The study must:

(a) Include a review of the results of the collective bargaining provided to family child care providers. This must include whether this has resulted in increased economic compensation, health and welfare benefits, professional development and training, and other economic matters to these providers;

(b) Be made in consultation with child care center directors and workers as well as other interested stakeholders. Directors and workers must be consulted in several areas of the state, including centers located in eastern Washington and western Washington;

(c) Review alternative methods of raising the child care subsidy rate;

(d) Review alternative methods to provide training to child care center directors and workers;

(e) Review methods to retain child care center workers and otherwise reduce employee turnover; and

(f) Include other items the department determines necessary to study in order to increase educational opportunities for children in child care centers.

(2) The study required under this subsection must be completed by August 1, 2010, and delivered to the joint legislative task force on child care center subsidy and reimbursement rates established in section 3 of this act.

(3) This section expires December 31, 2010.

**NEW SECTION. Sec. 3.** (1) The joint legislative task force on child care center subsidy and reimbursement rates is established. The task force shall consist of the following members:

(a) The chair and the ranking minority member of the senate labor, commerce and consumer protection committee;

(b) The chair and the ranking minority member of the house of representatives commerce and labor committee;

(c) Up to eight members appointed jointly by the president of the senate and the speaker of the house of representatives that represent child care centers. These members must include representatives of businesses that own and operate ten or more child care centers; representatives of local nonprofit organizations whose primary mission is to provide social services, such as the YMCA and the YWCA; and representatives of child care centers such as the Washington federation of independent schools, child care consulting, the Washington education association, the American federation of teachers; and the service employees international union; and

(d) The director of the department of early learning, or the director's designee.

(2) The task force must review the results of the study conducted under section 2 of this act and must develop proposed legislation that is intended to increase the child care subsidy and reimbursement rates. In developing proposed legislation, the task force must consider previous legislative attempts to raise the subsidy rate including SB 5506, which was proposed during the 2009 legislative session.

(3) The task force must submit its proposed legislation to the senate labor commerce and consumer protection committee, the senate early learning and K-12 education committee, the house of representatives commerce and labor committee, and the house of representatives early learning and children's services committee by December 1, 2011.

(4) This section expires December 31, 2011."

Renumber the sections consecutively and correct any internal references accordingly.

On page 10, beginning on line 24 strike everything through "section." On page 16, line 7.

Renumber the sections consecutively and correct any internal references accordingly.

On page 18, beginning on line 31, strike everything through "workers." On page 19, line 7.

Renumber the sections consecutively and correct any internal references accordingly.

On page 24, line 14 of the title amendment, after "insert", strike the remainder of the title amendment and insert "amending RCW 41.56.028, 41.56.030, 43.215.010, 74.15.020, and creating new sections

and the same is herewith transmitted.

Thomas Hoemann, Secretary

## SENATE AMENDMENT TO HOUSE BILL

### MOTION

Representative Condotta moved that the House concur in the Senate amendments to SUBSTITUTE HOUSE BILL NO. 1329.

Representative Condotta spoke in favor of the motion to concur in the Senate amendments.

Representative Conway spoke against the motion to concur in the Senate amendments.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the motion to concur in the Senate amendments to Substitute House Bill No. 1329.

### ROLL CALL

The Clerk called the roll on the motion to concur in the Senate amendments to Substitute House Bill No. 1329 and the motion was not adopted by the following vote: Yeas: 36; Nays: 61; Absent: 0; Excused: 1.

Voting yea: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Chandler, Condotta, Cox, Crouse, DeBolt, Ericksen, Grant-Herriot, Haler, Hinkle, Hope, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Moeller, O'Brien, Orcutt, Parker, Pearson, Roach, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh and Warnick.

Voting nay: Representatives Appleton, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Conway, Dammeyer, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Goodman, Green, Haigh, Hasegawa, Herrera, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kenney, Kessler, Kirby, Liiias, Linville, Maxwell, McCoy, Miloscia, Morrell, Morris, Nelson, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rolfes, Santos, Seaquist, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

The House did not concur in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1329 and asked the Senate for a conference thereon. The Speaker (Representative Morris presiding) appointed Representatives Conway, Condotta and Pettigrew as conferees.

### MESSAGE FROM THE SENATE

April 7, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2165 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that forest biomass is an abundant and renewable byproduct of Washington's

forest land management. Forest biomass can be utilized to generate clean renewable energy.

In some Washington forests, residual forest biomass is burned on site or left to decompose. The lack of forest products markets in some areas means that standing forest biomass removed for forest health and wildfire risk reduction treatments must occur at substantial cost. Utilizing forest biomass to generate energy can reduce the greenhouse gases emitted by burning forest biomass.

The legislature further finds that the emerging forest biomass energy economy is challenged by: Not having a reliable supply of predictably priced forest biomass feedstock; shipping and processing costs; insufficient forest biomass processing infrastructure; and feedstock demand.

The legislature finds that making use of the state's forest biomass resources for energy production may generate new revenues or increase asset values of state lands and state forest lands, protect forest land of all ownerships from severe forest health problems, stimulate Washington's economy, create green jobs, and reduce Washington's dependence on foreign oil.

It is the intent of the legislature to support forest biomass demonstration projects that employ promising processing technologies. The demonstration projects must emphasize public and private forest biomass feedstocks that are generated as byproducts of current forest practices. The project must reveal ways to overcome the current impediments to the developing forest biomass energy economy, and ways to realize ecologically sustainable outcomes from that development.

**NEW SECTION. Sec. 2.** (1) The department may develop and implement forest biomass energy demonstration projects, one east of the crest of the Cascade mountains and one west of the crest of the Cascade mountains. The demonstration projects must be designed to:

- (a) Reveal the utility of Washington's public and private forest biomass feedstock;
- (b) Create green jobs and generate renewable energy;
- (c) Generate revenues or improve asset values for beneficiaries of state lands and state forest lands;
- (d) Improve forest health, reduce pollution, and restore ecological function; and
- (e) Avoid interfering with the current working area for forest biomass collection surrounding an existing fixed location biomass energy production site.

(2) To develop and implement the forest biomass energy demonstration projects, the department may form forest biomass energy partnerships or cooperatives.

(3) The forest biomass energy partnerships or cooperatives are encouraged to be public-private partnerships focused on convening the entities necessary to grow, harvest, process, transport, and utilize forest biomass to generate renewable energy. Particular focus must be given to recruiting and employing emerging technologies that can locally process forest biomass feedstock to create local green jobs and reduce transportation costs.

(4) The forest biomass energy partnerships or cooperatives may include, but are not limited to: Entrepreneurs or organizations developing and operating emerging technology to process forest biomass; industrial electricity producers; contractors capable of providing the local labor needed to collect, process, and transport forest biomass feedstocks; tribes; federal land management agencies; county, city, and other local governments; the department of community, trade, and economic development; state trust land managers; an organization dedicated to protecting and strengthening the jobs, rights, and working conditions of Washington's working families; accredited research institution representatives; an industrial

timber land manager; a small forest landowner; and a not-for-profit conservation organization.

**NEW SECTION. Sec. 3.** By December 2010, the department shall provide a progress report to the legislature regarding its efforts to develop, implement, and evaluate forest biomass energy demonstration projects and any other department initiatives related to forest biomass. The report may include an evaluation of:

(1) The status of the department's abilities to secure funding, partners, and other resources for the forest biomass energy demonstration projects;

(2) The status of the biomass energy demonstration projects resulting from the department's efforts;

(3) The status and, if applicable, additional needs of forest landowners within the demonstration project areas for estimating sustainable forest biomass yields and availability;

(4) Forest biomass feedstock supply and forest biomass market demand barriers, and how they can best be overcome including actions by the legislature and United States congress; and

(5) Sustainability measures that may be instituted by the state to ensure that an increasing demand for forest biomass feedstocks does not impair public resources or the ecological conditions of forests.

**NEW SECTION. Sec. 4.** For the purposes of implementing this act, the department may seek grants or financing from the federal government, industry, or philanthropists.

**Sec. 5.** RCW 76.06.150 and 2004 c 218 s 2 are each amended to read as follows:

(1) The commissioner of public lands is designated as the state of Washington's lead for all forest health issues.

(2) The commissioner of public lands shall strive to promote communications between the state and the federal government regarding forest land management decisions that potentially affect the health of forests in Washington and will allow the state to have an influence on the management of federally owned land in Washington. Such government-to-government cooperation is vital if the condition of the state's public and private forest lands are to be protected. These activities may include, when deemed by the commissioner to be in the best interest of the state:

(a) Representing the state's interest before all appropriate local, state, and federal agencies;

(b) Assuming the lead state role for developing formal comments on federal forest management plans that may have an impact on the health of forests in Washington; ~~(and)~~

(c) Pursuing in an expedited manner any available and appropriate cooperative agreements, including cooperating agency status designation, with the United States forest service and the United States bureau of land management that allow for meaningful participation in any federal land management plans that could affect the department's strategic plan for healthy forests and effective fire prevention and suppression, including the pursuit of any options available for giving effect to the cooperative philosophy contained within the national environmental policy act of 1969 (42 U.S.C. Sec. 4331); and

(d) Pursuing agreements with federal agencies in the service of forest biomass energy partnerships and cooperatives authorized under sections 2 through 4 of this act.

(3) The commissioner of public lands shall report to the chairs of the appropriate standing committees of the legislature every year on progress under this section, including the identification, if deemed appropriate by the commissioner, of any needed statutory changes, policy issues, or funding needs.

**Sec. 6.** RCW 43.30.020 and 1965 c 8 s 43.30.020 are each amended to read as follows:

((For the purpose of this chapter, except where a different interpretation is required by the context:)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of natural resources(†);

(2) "Board" means the board of natural resources(†);

(3) "Administrator" means the administrator of the department of natural resources(†);

(4) "Supervisor" means the supervisor of natural resources(†);

(5) "Agency" and "state agency" means any branch, department, or unit of the state government, however designated or constituted(†);

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

(7) "Forest biomass" means the byproducts of: Current forest practices prescribed or permitted under chapter 76.09 RCW; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the byproducts of forest health treatments prescribed or permitted under chapter 76.06 RCW. "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests, except wood removed for forest health treatments under chapter 76.06 RCW and RCW 79.15.540; wood required by chapter 76.09 RCW for large woody debris recruitment; or municipal solid waste.

**NEW SECTION. Sec. 7.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 8.** Sections 2 through 4 of this act are each added to chapter 43.30 RCW under the subchapter heading "duties and powers--forested lands."

On page 1, line 2 of the title, after "project;" strike the remainder of the title and insert "amending RCW 76.06.150 and 43.30.020; adding new sections to chapter 43.30 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 2165 and advanced the bill as amended by the Senate to final passage.

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

Representatives Van De Wege and Condotta spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 2165, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2165, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler,

Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Absent: Representative Linville.

Excused: Representative Flannigan.

HOUSE BILL NO. 2165, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 10, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2313 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 46.16.162 and 2006 c 337 s 3 are each amended to read as follows:

(1) The owner of a farm vehicle licensed under RCW 46.16.090 purchasing a monthly license under RCW 46.16.135 may, as an alternative to the first partial month of the license registration, secure and operate the vehicle under authority of a farm vehicle trip permit issued by this state. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles.

(2) If a monthly license previously issued has expired, the owner of a farm vehicle may, as an alternative to purchasing a full monthly license, secure and operate the vehicle under authority of a farm vehicle trip permit issued by this state. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles.

(3) Each farm vehicle trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for the vehicle for ~~((the period remaining in the first month of monthly license))~~ thirty consecutive calendar days, commencing with the day of first use. No more than four such permits may be used for any one vehicle in any twelve-month period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The farm vehicle trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(4) Vehicles operating under authority of farm vehicle trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(5) Farm vehicle trip permits may be obtained from the department of licensing or agents and subagents appointed by the department. The fee for each farm vehicle trip permit is six dollars

and twenty-five cents. Farm vehicle trip permits sold by the department's agents or subagents are subject to fees specified in RCW 46.01.140 (4)(a), (5)(b), or (6).

(6) The proceeds from farm vehicle trip permits received by the director shall be forwarded to the state treasurer to be distributed as provided in RCW 46.68.035(2).

(7) No exchange, credits, or refunds may be given for farm vehicle trip permits after they have been purchased.

(8) The department of licensing may adopt rules as it deems necessary to administer this section."

On page 1, line 2 of the title, after "permits;" strike the remainder of the title and insert "and amending RCW 46.16.162."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 2313 and advanced the bill as amended by the Senate to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Grant-Herriot spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 2313, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2313, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 2313, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

April 14, 2009

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 1021 with the following amendment:

On page 3, after line 5, insert the following:

"Sec. 3. RCW 70.38.105 and 2009 c ... (ESB 5423) s 1 are each amended to read as follows:

(1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or boarding home care to nursing home care if the bed redistribution is to be effective for a period in excess of six months. A health care facility certified as a critical access hospital under 42 U.S.C. 1395i-4 may increase its total number of licensed beds to the total number of beds

permitted under 42 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care and nursing home care without being subject to certificate of need review. If there is a nursing home licensed under chapter 18.51 RCW within twenty-seven miles of the critical access hospital, the critical access hospital is subject to certificate of need review except for:

(i) Critical access hospitals which had designated beds to provide nursing home care, in excess of five swing beds, prior to December 31, 2003;

(ii) Up to five swing beds; or

(iii) Up to twenty-five swing beds for critical access hospitals which do not have a nursing home licensed under chapter 18.51 RCW within the same city or town limits. ~~((No more than))~~ Up to one-half of the additional beds designated for swing bed services under this subsection (4)(e)(iii) may be so designated before July 1, ~~((2009))~~ 2010, with the balance designated ~~((no sooner than))~~ on or after July 1, 2010.

Critical access hospital beds not subject to certificate of need review under this subsection (4)(e) will not be counted as either acute care or nursing home care for certificate of need review purposes. If a health care facility ceases to be certified as a critical access hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the type and number of licensed hospital beds as it had when it requested critical access hospital designation;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section."

On page 1, line 1 of the title, after "audits;" strike the remainder of the title and insert "and amending RCW 70.41.120, 70.41.122, and 70.38.105."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 1021 and advanced the bill as amended by the Senate to final passage.

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

Representative Campbell spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 1021, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 1021, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SECOND SUBSTITUTE HOUSE BILL NO. 1021, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 7, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1036 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 38.32.010 and 1989 c 19 s 39 are each amended to read as follows:

Any member of the organized militia committing nonmilitary offenses under chapter 38.38 RCW while on duty status ~~((as provided in RCW 38.38.624,))~~ or within state armories ~~((committing offenses against the laws of the state,))~~ shall be promptly arrested by the military authorities and turned over to the civil authorities of the county or city in which the offense was committed.

"**Sec. 2.** RCW 38.32.020 and 1989 c 19 s 40 are each amended to read as follows:

(1) Military offenses under chapter 38.38 RCW committed ~~((while on inactive duty or active state service as defined in RCW 38.04.010))~~ by members of the organized militia may be tried and punished as provided under chapter 38.38 RCW ~~((after this duty or service has terminated, and if found guilty the accused shall be punished accordingly. Any member of the organized militia on "inactive duty" or "active state service," as defined in RCW~~



38.04.010, committing any offense under chapter 38.38 RCW, where the offense charged is also made an offense by the civil law of this state, may, in the discretion of the officer whose duty it is to approve the charge, be turned over to the proper civil authorities for trial).

(2) Primary jurisdiction over military offenses enumerated in chapter 38.38 RCW is with military authorities. Primary jurisdiction over nonmilitary offenses is with civilian authorities. If an offense may be both military and nonmilitary, the military authorities may proceed only after the civilian authorities have declined to prosecute or dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by whether the underlying offense is a military or nonmilitary offense.

(3) Any member of the organized militia (~~on "inactive duty" or "active state service," as defined in RCW 38.04.010;~~) committing any offense under chapter 38.38 RCW ~~(;)~~ may, if such offense is committed ~~(upon)~~ on a military reservation of the United States within this state, be turned over to the civil authorities for trial as provided by federal law.

**Sec. 3.** RCW 38.38.004 and 1989 c 48 s 1 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) "Organized militia" means the national guard of the state, as defined in section 101(3) of title 32, United States Code, and any other military force organized under the laws of the state of Washington.

(2) "Officer" means commissioned or warrant officer.

(3) "Commissioned officer" includes a commissioned warrant officer.

(4) "Commanding officer" includes only commissioned officers in command of a unit.

(5) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(6) "Enlisted member" means a person in an enlisted grade.

(7) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) "Rank" means the order of precedence among members of the organized militia.

(9) ~~((The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States.~~

~~—The term "inactive duty" shall include periods of drill and such other training and service not requiring the entire time of the organization or person, as may be required under state or federal laws, regulations, or orders, including travel to and from such duty.~~

~~(10)) "Military court" means a court-martial or a court of inquiry.~~

~~((11)) (10) "Military judge" means the presiding officer of a general or special court-martial detailed in accordance with RCW 38.38.256.~~

~~((12)) (11) "State judge advocate" means the commissioned judge advocate officer responsible for supervising the administration of the military justice in the organized militia.~~

~~((13)) (12) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused.~~

~~((14)) (13) "Military" refers to any or all of the armed forces.~~

~~((15)) (14) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.~~

~~((16)) (15) "May" is used in a permissive sense. The words "no person may. . ." mean that no person is required, authorized, or permitted to do the act prescribed.~~

~~((17)) (16) "Shall" is used in an imperative sense.~~

~~((18)) (17) "Code" means this chapter.~~

~~((19)) (18) "A month's pay" or fraction thereof shall be calculated based upon a member's basic pay entitlement as if the member were serving for a thirty-day period.~~

~~(19) "Judge advocate" means an officer of the army or air national guard designated as a judge advocate by the judge advocate general of the army or the judge advocate general of the air force.~~

~~(20) "Military offense" means those offenses listed in RCW 38.38.644 through 38.38.800 and sections 25 and 26 of this act.~~

~~(21) "Nonmilitary offense" means any offense other than those listed in Title 38 RCW.~~

**Sec. 4.** RCW 38.38.008 and 1989 c 48 s 2 are each amended to read as follows:

This code applies to all members of the organized militia who are not in federal service pursuant to Title 10 U.S.C.

**Sec. 5.** RCW 38.38.024 and 1989 c 48 s 6 are each amended to read as follows:

(1) The governor, on the recommendation of the adjutant general, shall appoint ~~((am)) a judge advocate~~ officer of the ~~((organized militia)) army or air national guard~~ as state judge advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the bar of the state for at least five years.

(2) The adjutant general may appoint as many assistant state judge advocates as he or she considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the organized militia and members of the bar of the highest court of the state.

(3) The state judge advocate or assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(4) Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command, or with the state judge advocate.

(5) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate to any reviewing authority upon the same case.

~~(6) No judge advocate may be assigned nonlegal duties unless authorized by the state judge advocate.~~

**NEW SECTION. Sec. 6.** A new section is added to chapter 38.38 RCW to read as follows:

A military judge must be a judge advocate. The adjutant general shall prescribe procedures for certifying, appointing, detailing, and removing military judges.

**Sec. 7.** RCW 38.38.080 and 1989 c 48 s 11 are each amended to read as follows:

Persons confined other than in a guard house, whether before, during, or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons designated by the governor or ~~((b~~

~~such person as the governor may authorize to act))~~ the adjutant general.

**Sec. 8.** RCW 38.38.092 and 1989 c 48 s 14 are each amended to read as follows:

(1) Under such regulations as may be prescribed (~~((under this code))~~) by the adjutant general, a person subject to this code (~~((who is on active state service or inactive duty))~~) who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to military custody for the completion of the sentence.

**Sec. 9.** RCW 38.38.132 and 1991 c 43 s 5 are each amended to read as follows:

(1) Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the organized militia under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the governor, a commanding officer exercising general court-martial jurisdiction or an officer of general rank in command may delegate powers under this section to a principal assistant.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his or her command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive duty or drill days;

(ii) If imposed by an officer exercising general court-martial jurisdiction or an officer of general rank in command:

(A) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive drill or duty days;

(C) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month;

(b) Upon other personnel of his or her command:

(i) If imposed upon a person attached to or embarked in a vessel, confinement for not more than three consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties for not more than fourteen duty or drill days, which need not be consecutive, and for not more than two hours per day, holidays included;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(vi) Detention of not more than fourteen days' pay;

(vii) If imposed by ~~((an))~~ a commanding officer of the grade of major or above:

(A) The punishment authorized in subsection (2)(b)(i) of this section;

(B) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(C) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(D) Extra duties, including fatigue or other duties, for not more than fourteen drill or duty days, which need not be consecutive, and for not more than two hours per day, holidays included;

(E) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(F) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. Extra duties and restriction may not be combined to run consecutively in the maximum amount imposable for each. Whenever any such punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which the officer is in charge such of the punishment authorized under subsection (2)(b) of this section as the governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition, the officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating extra duties to restriction, the restriction shall not be longer than the number of hours of extra duty that may have been imposed. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (a) Forfeiture of more than seven days' pay;
- (b) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (c) Extra duties for more than ten days;
- (d) Restriction for more than ten days; or
- (e) Detention of more than fourteen days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The governor may by regulation prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

**Sec. 10.** RCW 38.38.180 and 1963 c 220 s 18 are each amended to read as follows:

Subject to RCW 38.38.176, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than ~~((two))~~ three hundred dollars;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks; or
- (6) Any combination of these punishments.

**Sec. 11.** RCW 38.38.188 and 1989 c 48 s 19 are each amended to read as follows:

(1) Subject to RCW 38.38.176, summary courts-martial have jurisdiction to try persons subject to this code, except officers for any offense made punishable by this code.

(2) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if the person objects thereto, unless under RCW 38.38.132 the person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has been permitted to refuse punishment under RCW 38.38.132, trial shall be ordered by special or general court-martial, as may be appropriate.

(3) A summary court-martial may sentence to a fine of not more than twenty-five dollars for a single offense, to forfeiture of ~~((pay and allowances))~~ not more than one-half month's pay for two months, to reduction in rank of enlisted soldiers, and to reduction of a noncommissioned officer to the ranks.

**Sec. 12.** RCW 38.38.240 and 1989 c 48 s 22 are each amended to read as follows:

In the organized militia not in federal service pursuant to Title 10 U.S.C., general courts-martial may be convened by the president or by the governor, or by the ~~((commanding general of the national guard of the District of Columbia))~~ adjutant general.

**Sec. 13.** RCW 38.38.244 and 1989 c 48 s 23 are each amended to read as follows:

(1) In the organized militia not in federal service pursuant to Title 10 U.S.C., anyone authorized to convene a general court-

martial, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command~~((s))~~ may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.

(2) A special court-martial may not try a commissioned officer.

**Sec. 14.** RCW 38.38.248 and 1989 c 48 s 24 are each amended to read as follows:

(1) In the organized militia not in federal service pursuant to Title 10 U.S.C., anyone authorized to convene a special court-martial, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment~~((s))~~ may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment the commissioned officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable.

**Sec. 15.** RCW 38.38.312 and 1989 c 48 s 30 are each amended to read as follows:

(1) No person subject to this code may compel a person~~((s))~~ to incriminate ~~((themselves))~~ himself or herself or to answer any question the answer to which may tend to incriminate ~~((them))~~ himself or herself.

(2) No person subject to this code may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing the person of the nature of the accusation and advising that the person does not have to make any statement regarding the offense of which he or she is accused or suspected and that any statement made by the person may be used as evidence against him or her in a trial by court-martial.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade the person.

(4) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

**Sec. 16.** RCW 38.38.316 and 1989 c 48 s 31 are each amended to read as follows:

(1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him or her and of the right to be represented at that investigation by counsel. The accused has a right to be represented at that investigation as provided in RCW 38.38.376 and in regulations prescribed under that section.

At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to present anything the person may desire in his or her

own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) (~~hereof~~) of this section, no further investigation of that charge is necessary under this section unless it is demanded by the accused after being informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his or her own behalf.

(4) If evidence adduced in an investigation under this chapter indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused:

- (a) Is present at the investigation;
- (b) Is informed of the nature of each uncharged offense investigated; and
- (c) Is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) of this section.

(5) The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction.

**Sec. 17.** RCW 38.38.376 and 1989 c 48 s 37 are each amended to read as follows:

(1) The trial counsel of a general or special court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(2) ~~((The accused has the right to be represented in his or her defense before a general or special court-martial by civilian counsel if provided by the accused, or by military counsel of his or her own selection if reasonably available as defined in regulations of the governor, or by the defense counsel detailed under RCW 38.38.260. Should the accused have civilian counsel of his or her own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as associate counsel; otherwise they shall be excused by the military judge or president of a special court-martial.~~

~~(3) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters the defense counsel feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate and assist the accused in the submission of any matter under RCW 38.38.536.~~

~~(4)) The accused has the right to be represented in his or her defense before a general or special court-martial or at an investigation under RCW 38.38.316 as provided in this subsection.~~

(a) The accused may be represented by civilian counsel if provided at his or her own expense.

(b) The accused may be represented by:

- (i) Military counsel detailed under RCW 38.38.260; or
- (ii) Military counsel of his or her own selection if that counsel is reasonably available, as determined under regulations prescribed under subsection (3) of this section.

(c) If the accused is represented by civilian counsel, military counsel detailed or selected under (b) of this subsection shall act as associate counsel unless excused at the request of the accused.

(d) Except as provided under (e) of this subsection, if the accused is represented by military counsel of his or her own selection under (b)(ii) of this subsection, any military counsel detailed under (b)(i) of this subsection shall be excused.

(e) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under RCW 38.38.260 to detail counsel in his or her sole discretion:

(i) May detail additional military counsel as assistant defense counsel; and

(ii) If the accused is represented by military counsel of his or her own selection under (b)(ii) of this subsection, may approve a request from the accused that military counsel detailed under (b)(i) of this subsection act as associate defense counsel.

(3) The state judge advocate shall, by regulation, define "reasonably available" for the purpose of subsection (2) of this section and establish procedures for determining whether the military counsel selected by an accused under subsection (2) of this section is reasonably available.

(4) In any court-martial proceeding resulting in a conviction, the defense counsel:

(a) May forward for attachment to the record of proceedings a brief of such matters as he or she determines should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate;

(b) Shall assist the accused in the submission of any matter under RCW 38.38.536; and

(c) May take other action authorized by this chapter.

(5) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when qualified to be a trial counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

~~((5))~~ (6) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when qualified to be the defense counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

**Sec. 18.** RCW 38.38.388 and 1989 c 48 s 40 are each amended to read as follows:

(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or, if none, the court shall determine the relevance and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by RCW 38.38.172, all parties shall, notwithstanding RCW 38.38.268, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(3) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

(4) If exercise of a peremptory challenge reduces the court below the minimum number of members required by RCW 38.38.172, the parties shall, notwithstanding RCW 38.38.268, either exercise or waive any remaining peremptory challenge, that has not been previously waived, against the remaining members of the court before additional members are detailed to the court.

(5) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

**Sec. 19.** RCW 38.38.396 and 1989 c 48 s 42 are each amended to read as follows:

(1) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(2) Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under RCW 38.38.784 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(3) Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under RCW 38.38.132 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under RCW 38.38.132.

(4) Periods in which the accused was absent from territory in which the state has the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

(5) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations:

(a) Has expired; or

(b) Will expire within one hundred eighty days after the date of dismissal of the charges and specifications  
trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in subsection (6) of this section are met.

(6) The conditions referred to in subsection (5) of this section are that the new charges and specifications must:

(a) Be received by an officer exercising summary court-martial jurisdiction over the command within one hundred eighty days after the dismissal of the charges or specifications; and

(b) Allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications.

**Sec. 20.** RCW 38.38.408 and 1989 c 48 s 45 are each amended to read as follows:

(1) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the governor may prescribe.

(2) The president of a special court-martial, military judge, military magistrate, or a summary court officer may:

(a) Issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(b) Issue subpoenas duces tecum and other subpoenas;

(c) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(d) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(3) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as prescribed by the laws of the state.

**Sec. 21.** RCW 38.38.412 and 1989 c 48 s 46 are each amended to read as follows:

(1) Any person not subject to this code who:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the superior court of the state; and

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state.

(2) Any person who commits an offense named in subsection (1) of this section shall be tried before the superior court of this state having jurisdiction and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than six months, or both.

(3) The prosecuting attorney in any such court, upon the certification of the facts by the military court, commission, court of inquiry, or board, shall prosecute any person violating this section.

**Sec. 22.** RCW 38.38.624 and 1963 c 220 s 75 are each amended to read as follows:

No person may be tried or punished for any offense provided for in RCW 38.38.628 through 38.38.800, unless ~~((it was committed while he was in a duty status))~~ he or she was a member of the organized militia at the time of the offense.

**Sec. 23.** RCW 38.38.752 and 1963 c 220 s 107 are each amended to read as follows:

Any person subject to this code who ~~((, while in a duty status,))~~ willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial may direct.

**Sec. 24.** RCW 38.38.760 and 1963 c 220 s 109 are each amended to read as follows:

~~((Any person subject to this code who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.))~~

(1) Any person subject to this code who:

(a) Operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 25; or

(b) Operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (2) of this section; or

(c) Operates or is in actual physical control of any vehicle, aircraft, or vessel in a reckless or wanton manner shall be punished as a court-martial may direct.

(2) For purposes of subsection (1) of this section, the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.08 grams of alcohol per one hundred milliliters of blood and with respect to alcohol concentration in a person's breath is 0.08 grams of alcohol per two hundred ten liters of breath, as shown by chemical analysis.

(3) For purposes of this section, "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

**NEW SECTION. Sec. 25.** A new section is added to chapter 38.38 RCW to read as follows:

(1) Any person subject to this code who wrongfully uses, possesses, distributes, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces or organized militia a substance described in subsection (2) of this section shall be punished as a court-martial may direct.

(2) The substances referred to in subsection (1) of this section are the following:

(a) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(b) Any substance not specified in (a) of this subsection that is listed on a schedule of controlled substances prohibited by the United States army; or

(c) Any other substance not specified in this subsection that is listed in Schedules I through V of section 202 of the federal controlled substances act, 21 U.S.C. Sec. 812, as amended:

**NEW SECTION. Sec. 26.** A new section is added to chapter 38.38 RCW to read as follows:

Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another member of the organized militia, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

**Sec. 27.** RCW 38.38.800 and 1989 c 48 s 71 are each amended to read as follows:

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault in the first degree, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

**Sec. 28.** RCW 38.38.840 and 1989 c 48 s 72 are each amended to read as follows:

(1) Courts of inquiry to investigate any matter may be convened by the governor, the adjutant general, or by any other person designated by the governor for that purpose, whether or not the persons involved have requested such an inquiry: PROVIDED, That upon the request of the officer involved such an inquiry shall be instituted as hereinabove set forth.

(2) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(3) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed in the state military department, who has a direct interest in the subject of inquiry has the right to be designated as a

party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(7) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

**Sec. 29.** RCW 38.38.844 and 1989 c 48 s 73 are each amended to read as follows:

(1) The following members of the organized militia may administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

(a) The state judge advocate and all assistant state judge advocates;

(b) All law specialists or paralegals;

(c) All summary courts-martial;

(d) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(e) The military judge, president, trial counsel, and assistant trial counsel for all general and special courts-martial;

(f) The president and the counsel for the court of any court of inquiry;

(g) All officers designated to take a deposition;

(h) All commanding officers of units of the organized militia;

(i) All officers of the organized militia designated as recruiting officers;

(j) All persons detailed to conduct an investigation; and

~~((f))~~ (k) All other persons designated by regulations of the ~~((governor))~~ adjutant general.

~~(2) ((Officers of the organized militia may not be authorized to administer oaths as provided in this section unless they are on active state service or inactive duty for training in or with those forces under orders of the governor as prescribed in this code.~~

~~—(3))~~ The signature without seal of any such person, together with the title of the person's office, is prima facie evidence of the person's authority.

**Sec. 30.** RCW 38.38.848 and 1989 c 48 s 74 are each amended to read as follows:

(1) RCW 38.38.008, 38.38.012, 38.38.064 through 38.38.132, 38.38.252, 38.38.260, 38.38.372, 38.38.480, 38.38.624 through 38.38.792, and 38.38.848 through 38.38.860 shall be carefully explained to every enlisted member;

(a) At the time of the member's enlistment or transfer or induction (~~into, or~~);

(b) At the time of the member's order to duty in or with any of the organized militia; or

(c) Within ~~((thirty))~~ forty days thereafter. ~~((They))~~

(2) These sections shall also be explained ~~((annually to each unit of the organized militia))~~ again to each member of the organized militia each time a member of the organized militia reenlists or extends his or her enlistment.

(3) A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the organized militia, upon request, for personal examination."

On page 1, line 1 of the title, after "justice;" strike the remainder of the title and insert "amending RCW 38.32.010, 38.32.020, 38.38.004, 38.38.008, 38.38.024, 38.38.080, 38.38.092, 38.38.132, 38.38.180, 38.38.188, 38.38.240, 38.38.244, 38.38.248, 38.38.312, 38.38.316, 38.38.376, 38.38.388, 38.38.396, 38.38.408, 38.38.412, 38.38.624, 38.38.752, 38.38.760, 38.38.800, 38.38.840, 38.38.844, and 38.38.848; and adding new sections to chapter 38.38 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1036 and advanced the bill as amended by the Senate to final passage.

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

Representative Kelley spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1036, as amended by the Senate.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute House Bill No. 1036, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1036, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

April 13, 2009

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 1087 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 43.41 RCW to read as follows:

(1) The office shall, in consultation with the office of minority and women's business enterprises and any advisory committee, develop a strategic plan to improve the effectiveness of all state agencies in carrying out the purposes of chapter 39.19 RCW, including assisting small minority and women's business enterprises in competing for and receiving state contracts and otherwise succeeding in this state. The plan must be updated at least annually and must include timelines and, at a minimum, strategies to:

(a) Facilitate communication with and among minority and women's business enterprises on contracting with the state, including providing for a central depository of information accessible to small businesses and to individual contracting agencies and officers;

(b) Increase the effectiveness of existing outreach from the office of minority and women's business enterprises to small businesses, including publicizing the value of certification under chapter 39.19 RCW, and increase outreach by individual agencies;

(c) Streamline the statewide certification process under chapter 39.19 RCW;

(d) Focus technical assistance to small businesses and certified firms;

(e) Provide an effective training program to contracting officers at all state agencies on the certification process in chapter 39.19 RCW and ways to increase the role of minority and women-owned businesses in state contracting;

(f) Address barriers to inclusion of certified firms in the state procurement process;

(g) Increase selection of firms certified under chapter 39.19 RCW as prime contractors and subcontractors in contracts awarded by state agencies and educational institutions; and

(h) Develop accountability measures to use in reporting progress by state agencies and educational institutions in achieving the purposes of this chapter.

(2) The office must report on the strategic plan and its assessment of progress to the governor and the appropriate committees of the legislature, with a preliminary report by September 1, 2009, and annual reports beginning December 1, 2009. The report must include relevant fiscal information.

**"NEW SECTION. Sec. 2.** A new section is added to chapter 43.41 RCW to read as follows:

(1) For the purpose of annual reporting on progress required by section 1 of this act, each state agency and educational institution shall submit data to the office and the office of minority and women's business enterprises on the participation by qualified minority and women-owned and controlled businesses in the agency's or institution's contracts and other related information requested by the director. The director of the office of minority and women's business enterprises shall determine the content and format of the data and the reporting schedule, which must be at least annually.

(2) The office must develop and maintain a list of contact people at each state agency and educational institution that is able to present to hearings of the appropriate committees of the legislature its progress in carrying out the purposes of chapter 39.19 RCW.

(3) The office must submit a report aggregating the data received from each state agency and educational institution to the legislature and the governor.

**Sec. 3.** RCW 39.19.041 and 1995 c 269 s 1302 are each amended to read as follows:

(1) The director may establish (~~(ad hoc advisory committees, as necessary,)~~ advisory committees on various aspects of minority and women's business enterprises on an ad hoc basis to assist in the development of policies to carry out the purposes of this chapter and to provide the director with policy advice on current issues.

(2) The advisory committees may meet as often as necessary.

(3) Advisory committee membership:

(a) Must be as diverse and representative as possible of businesses certified under this chapter unless such a requirement would reduce the number of members with relevant knowledge and experience;

(b) Should include organizations that represent minority and women- owned businesses;

(c) Should reflect statewide geographic distribution of small businesses; and

(d) May include nonvoting representatives of state and local government."

On page 1, line 2 of the title, after "enterprises;" strike the remainder of the title and insert "amending RCW 39.19.041; and adding new sections to chapter 43.41 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 1087 and advanced the bill as amended by the Senate to final passage.

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

Representatives Kenney and Smith spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 1087, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 1087, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 85; Nays, 12; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Angel, Appleton, Bailey, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Conway, Cox, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Uptegrove,

Van De Wege, Wallace, Walsh, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Anderson, Armstrong, Chandler, Condotta, Crouse, Hinkle, Klippert, Kretz, Shea, Short, Taylor and Warnick.

Excused: Representative Flannigan.

ENGROSSED HOUSE BILL NO. 1087, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### STATEMENT FOR THE JOURNAL

I intended to vote NAY on ENGROSSED HOUSE BILL NO. 1087.

DON COX, 9th District

#### STATEMENT FOR THE JOURNAL

I intended to vote NAY on ENGROSSED HOUSE BILL NO. 1087.

JOE SCHMICK, 9th District

#### MESSAGE FROM THE SENATE

April 13, 2009

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 1123 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 70.41 RCW to read as follows:

(1) Each hospital licensed under this chapter shall, by January 1, 2010, adopt a policy regarding methicillin-resistant staphylococcus aureus. The policy shall, at a minimum, contain the following elements:

(a) A requirement to test any patient for methicillin-resistant staphylococcus aureus who is a member of a patient population identified as appropriate to test based on the hospital's risk assessment for methicillin-resistant staphylococcus aureus;

(b) A requirement that a patient in the hospital's adult or pediatric, but not neonatal, intensive care unit be tested for methicillin-resistant staphylococcus aureus within twenty-four hours of admission unless the patient has been previously tested during that hospital stay or has a known history of methicillin-resistant staphylococcus aureus;

(c) Appropriate procedures to help prevent patients who test positive for methicillin-resistant staphylococcus aureus from transmitting to other patients. For purposes of this subsection, "appropriate procedures" include, but are not limited to, isolation or cohorting of patients colonized or infected with methicillin-resistant staphylococcus aureus. In a hospital where patients, whose methicillin-resistant staphylococcus aureus status is either unknown or uncolonized, may be roomed with colonized or infected patients, patients must be notified they may be roomed with patients who have tested positive for methicillin-resistant staphylococcus aureus; and

(d) A requirement that every patient who has a methicillin-resistant staphylococcus aureus infection receive oral and written instructions regarding aftercare and precautions to prevent the spread of the infection to others.



(2) A hospital that has identified a hospitalized patient who has a diagnosis of methicillin-resistant staphylococcus aureus shall report the infection to the department using the department's comprehensive hospital abstract reporting system. When making its report, the hospital shall use codes used by the United States centers for medicare and medicaid services, when available.

**Sec. 2.** RCW 43.70.056 and 2007 c 261 s 2 are each amended to read as follows:

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

(a) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(b) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

(2)(a) A hospital shall collect data related to health care-associated infections as required under this subsection (2) on the following:

(i) Beginning July 1, 2008, central line-associated bloodstream infection in the intensive care unit;

(ii) Beginning January 1, 2009, ventilator-associated pneumonia; and

(iii) Beginning January 1, 2010, surgical site infection for the following procedures:

(A) Deep sternal wound for cardiac surgery, including coronary artery bypass graft;

(B) Total hip and knee replacement surgery; and

(C) Hysterectomy, abdominal and vaginal.

(b) Until required otherwise under (c) of this subsection, a hospital must routinely collect and submit the data required to be collected under (a) of this subsection to the national healthcare safety network of the United States centers for disease control and prevention in accordance with national healthcare safety network definitions, methods, requirements, and procedures.

(c)(i) With respect to any of the health care-associated infection measures for which reporting is required under (a) of this subsection, the department must, by rule, require hospitals to collect and submit the data to the centers for medicare and medicaid services according to the definitions, methods, requirements, and procedures of the hospital compare program, or its successor, instead of to the national healthcare safety network, if the department determines that:

(A) The measure is available for reporting under the hospital compare program, or its successor, under substantially the same definition; and

(B) Reporting under this subsection (2)(c) will provide substantially the same information to the public.

(ii) If the department determines that reporting of a measure must be conducted under this subsection (2)(c), the department must adopt rules to implement such reporting. The department's rules must require reporting to the centers for medicare and medicaid services as soon as practicable, but not more than one hundred twenty days, after the centers for medicare and medicaid services allow hospitals to report the respective measure to the hospital compare program, or its successor. However, if the centers for medicare and medicaid services allow infection rates to be reported using the centers for disease control and prevention's national healthcare safety network, the department's rules must require reporting that reduces the burden of data reporting and minimizes changes that hospitals must make to accommodate requirements for reporting.

(d) Data collection and submission required under this subsection (2) must be overseen by a qualified individual with the

appropriate level of skill and knowledge to oversee data collection and submission.

(e)(i) A hospital must release to the department, or grant the department access to, its hospital-specific information contained in the reports submitted under this subsection (2), as requested by the department.

(ii) The hospital reports obtained by the department under this subsection (2), and any of the information contained in them, are not subject to discovery by subpoena or admissible as evidence in a civil proceeding, and are not subject to public disclosure as provided in RCW 42.56.360.

(3) The department shall:

(a) Provide oversight of the health care-associated infection reporting program established in this section;

(b) By January 1, 2011, submit a report to the appropriate committees of the legislature based on the recommendations of the advisory committee established in subsection (5) of this section for additional reporting requirements related to health care-associated infections, considering the methodologies and practices of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations;

(c) Delete, by rule, the reporting of categories that the department determines are no longer necessary to protect public health and safety;

(d) By December 1, 2009, and by each December 1st thereafter, prepare and publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data reported in the previous calendar year pursuant to subsection (2) of this section. The department may update the reports quarterly. In developing a methodology for the report and determining its contents, the department shall consider the recommendations of the advisory committee established in subsection (5) of this section. The report is subject to the following:

(i) The report must disclose data in a format that does not release health information about any individual patient; and

(ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome; and

(e) Evaluate, on a regular basis, the quality and accuracy of health care-associated infection reporting required under subsection (2) of this section and the data collection, analysis, and reporting methodologies.

(4) The department may respond to requests for data and other information from the data required to be reported under subsection (2) of this section, at the requestor's expense, for special studies and analysis consistent with requirements for confidentiality of patient records.

(5)(a) The department shall establish an advisory committee which may include members representing infection control professionals and epidemiologists, licensed health care providers, nursing staff, organizations that represent health care providers and facilities, health maintenance organizations, health care payers and consumers, and the department. The advisory committee shall make recommendations to assist the department in carrying out its responsibilities under this section, including making recommendations on allowing a hospital to review and verify data to be released in the report and on excluding from the report selected data from certified critical access hospitals. Annually, beginning January 1, 2011, the advisory committee shall also make a

recommendation to the department as to whether current science supports expanding presurgical screening for methicillin-resistant staphylococcus aureus prior to open chest cardiac, total hip, and total knee elective surgeries.

(b) In developing its recommendations, the advisory committee shall consider methodologies and practices related to health care-associated infections of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations.

(6) The department shall adopt rules as necessary to carry out its responsibilities under this section.

**NEW SECTION. Sec. 3.** A new section is added to chapter 70.58 RCW to read as follows:

In completing a certificate of death in compliance with this chapter, a physician, physician assistant, or advanced registered nurse practitioner must note the presence of methicillin-resistant staphylococcus aureus, if it is a cause or contributing factor in the patient's death."

On page 1, line 2 of the title, after "aureus;" strike the remainder of the title and insert "amending RCW 43.70.056; adding a new section to chapter 70.41 RCW; and adding a new section to chapter 70.58 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1123 and advanced the bill as amended by the Senate to final passage.

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

Representative Campbell spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 1123, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 1123, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko,

Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1123, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 2, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1127 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 19.200.010 and 2000 c 163 s 1 are each amended to read as follows:

(1) The legislature finds that credit ~~((is an))~~ and debit cards are important tools for consumers in today's economy ~~((, particularly the use of credit cards))~~. The legislature also finds that unscrupulous persons often fraudulently use the ~~((credit))~~ card accounts of others by stealing the ~~((credit))~~ card itself or by obtaining the necessary information to fraudulently charge the purchase of goods and services to another person's ~~((credit card))~~ account. The legislature intends to provide some protection for consumers from the latter by limiting the information that can appear on a ~~((credit))~~ card receipt.

(2) No person that accepts credit or debit cards for the transaction of business shall print more than the last five digits of the ~~((credit))~~ card account number or print the ~~((credit))~~ card expiration date on a credit or debit card receipt. This includes all receipts kept by the person or provided to the cardholder.

(3) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the ~~((credit))~~ card number is by handwriting or by an imprint or copy of the credit or debit card.

(4) ~~((For purposes of chapter 163, Laws of 2000;))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

~~((5) This section applies on July 1, 2001, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service on or after July 1, 2001, and on July 1, 2004, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service prior to July 1, 2001.))~~ (b) "Debit card" means a card or device used to obtain money, property, labor, or services by a transaction that debits a cardholder's account, rather than extending credit.

**Sec. 2.** RCW 63.14.123 and 2000 c 163 s 2 are each amended to read as follows:

(1) A retailer shall not print more than the last five digits of the ~~((credit))~~ card account number or print the ~~((credit))~~ card expiration date on a credit or debit card receipt. This includes all receipts kept by the person or provided to the cardholder.

(2) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the:

(a) Sole means of recording the ~~((credit))~~ card number is by handwriting or by an imprint or copy of the credit or debit card; or

(b) Retailer processes the transaction electronically but also takes additional manual measures for the purpose of ensuring that the card is not being used fraudulently, including measures the retailer is contractually obligated to take in connection with its acceptance of credit or debit cards.

(3) ((This section applies on July 1, 2001, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service on or after July 1, 2001, and on July 1, 2004, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service prior to July 1, 2001)) For the purposes of this section:

(a) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(b) "Debit card" means a card or device used to obtain money, property, labor, or services by a transaction that debits a cardholder's account, rather than extending credit."

On page 1, line 1 of the title, after "information;" strike the remainder of the title and insert "and amending RCW 19.200.010 and 63.14.123."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1127 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1127, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1127, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 1127, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 7, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1137 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 79.02.300 and 2004 c 199 s 207 are each amended to read as follows:

(1) Every person who, without authorization, uses or occupies public lands, removes any valuable material as defined in RCW 79.02.010 from public lands, or causes waste or damage to public lands, or injures publicly owned personal property or publicly owned improvements to real property on public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization. Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, publicly owned personal property or publicly owned improvement, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs(=) including, but not limited to, its administrative costs, survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.

(2) This section does not apply in any case where liability for damages is provided under RCW ((64.12.030;)) 4.24.630, 64.12.030, or 79.02.320((=or 79.02.340)).

(3) The department is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of the same, to be commenced as ((is)) provided by law.

"**Sec. 2.** RCW 79.02.310 and 2003 c 53 s 379 are each amended to read as follows:

Every person who willfully commits any trespass upon any public lands of the state and cuts down, destroys, or injures any timber, or any tree, including a Christmas tree as defined in RCW 76.48.020, standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, is guilty of theft under chapter 9A.56 RCW.

"**Sec. 3.** RCW 79.02.320 and 1927 c 255 s 199 are each amended to read as follows:

Every person who shall cut or remove, or cause to be cut or removed, any timber growing or being upon any public lands of the state, including a Christmas tree as defined in RCW 76.48.020, or who shall manufacture the same into logs, bolts, shingles, lumber or other articles of use or commerce, unless expressly authorized so to do by a bill of sale from the state, or by a lease or contract from the state under which he or she holds possession of such lands, or by ((the)) provisions of law under ((and by virtue of)) which ((such)) the bill of sale, lease or contract was issued, shall be liable to the state

((~~in~~)) for treble the value of the timber or other articles ((~~so~~)) cut, removed, or manufactured, to be recovered in a civil action, and shall forfeit to the state all interest in ((~~and to~~)) any article into which ((~~said~~)) the timber is manufactured.

**Sec. 4.** RCW 64.12.030 and Code 1881 s 602 are each amended to read as follows:

Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, including a Christmas tree as defined in RCW 76.48.020, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, ((~~village, town or~~)) city or town lot, or cultivated grounds, or on the commons or public grounds of any ((~~village, town or~~)) city or town, or on the street or highway in front thereof, without lawful authority, in an action by ((~~such~~)) the person, ((~~village, town or~~)) city, or town against the person committing ((~~such~~)) the trespasses or any of them, ((~~if~~)) any judgment ((~~be given~~)) for the plaintiff((~~-it~~)) shall be ((~~given~~)) for treble the amount of damages claimed or assessed ((~~therefor, as the case may be~~)).

**NEW SECTION. Sec. 5.** The following acts or parts of acts are each repealed:

(1) RCW 79.02.340 (Removal of Christmas trees--Compensation) and 2004 c 199 s 208, 2003 c 334 s 504, 1988 c 128 s 66, 1955 c 225 s 1, & 1937 c 87 s 1; and

(2) RCW 79.02.350 (Intent of RCW 79.02.340) and 2003 c 334 s 505 & 1937 c 87 s 2."

On page 1, line 2 of the title, after "trees;" strike the remainder of the title and insert "amending RCW 79.02.300, 79.02.310, 79.02.320, and 64.12.030; and repealing RCW 79.02.340 and 79.02.350."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1137 and advanced the bill as amended by the Senate to final passage.

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

Representative Finn spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1137, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1137, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby,

Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 1137, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 3, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1158 with the following amendment:

On page 1, line 1 of the title, after "juror" strike "questionnaires" and insert "declarations"

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1158 and advanced the bill as amended by the Senate to final passage.

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

Representative Goodman spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1158, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1158, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 1158, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

April 15, 2009

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 1167 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that the linked deposit program is not accessible to many certified small businesses that the program was created to serve. The legislature further finds that the increased involvement of community development financial institutions in the linked deposit program could increase the participation of these small businesses. The legislature intends that the office of minority and women's business enterprises report to the legislature with an analysis of barriers faced by certified small businesses that are currently not able to participate in the linked deposit program and make recommendations on how to overcome those barriers.

**NEW SECTION. Sec. 2.** By December 1, 2009, the office of minority and women's business enterprises shall, in consultation with the state treasurer and within existing resources, submit a report with recommendations to the legislature that addresses the following issues:

- (1) The availability of sources of capital for certified borrowers, including the amounts and interest rates for that capital;
- (2) The loans that are not being funded for certified borrowers under the current program and why those loans are not being funded;
- (3) The availability of other sources of capital in the marketplace for those nonfunded loans of certified borrowers, including the amounts and interest rates for that capital;
- (4) Whether there are other institutions that may be willing to make those loans that are currently not being made to certified borrowers under the program;
- (5) Whether the program could be modified to encourage lenders to make those loans that are not currently being made to certified borrowers and whether the cost of those loans would be a barrier;
- (6) A review of how other states seek to increase access to capital for borrowers that traditionally lack access to capital; and
- (7) The role community development financial institutions could play in mitigating the cost of lending to certified borrowers who are not currently being served by the program.

**Sec. 3.** RCW 43.86A.060 and 2008 c 187 s 3 are each amended to read as follows:

(1) The state treasurer shall establish a linked deposit program for investment of deposits in qualified public depositories. As a condition of participating in the program, qualified public depositories must make qualifying loans as provided in this section. The state treasurer may purchase a certificate of deposit that is equal to the amount of the qualifying loan made by the qualified public depository or may purchase a certificate of deposit that is equal to the aggregate amount of two or more qualifying loans made by one or more qualified public depositories.

(2) Qualifying loans made under this section are those:

- (a) Having terms that do not exceed ten years;
- (b) Where an individual loan does not exceed one million dollars;
- (c)(i) That are made to a minority or women's business enterprise that has received state certification under chapter 39.19 RCW; or

(ii) That are made to a veteran-owned business that has received state certification under RCW 43.60A.190;

(d) Where the interest rate on the loan to the minority or women's business enterprise or veteran-owned business does not exceed an interest rate that is two hundred basis points below the interest rate the qualified public depository would charge for a loan for a similar purpose and a similar term, except that, if the preference given by the state treasurer to the qualified public depository under subsection (3) of this section is less than two hundred basis points, the qualified public depository may reduce the preference given on the loan by an amount that corresponds to the reduction in preference below two hundred basis points given to the qualified public depository; and

(e) Where the points or fees charged at loan closing do not exceed one percent of the loan amount.

(3) In setting interest rates of time certificate of deposits, the state treasurer shall offer rates so that a two hundred basis point preference will be given to the qualified public depository, except that the treasurer (~~(shall)~~) may lower the amount of the preference to ensure that the effective interest rate on the (~~(time certificate of)~~) deposit is not less than (~~(two)~~) zero percent.

(4) Upon notification by the state treasurer that a minority or women's business enterprise is no longer certified under chapter 39.19 RCW or that a veteran-owned business is no longer certified under RCW 43.60A.190, the qualified public depository shall reduce the amount of qualifying loans by the outstanding balance of the loan made under this section to the minority or women's business enterprise or the veteran-owned business, as applicable.

(5) The office of minority and women's business enterprises has the authority to adopt rules to:

(a) Ensure that when making a qualified loan under the linked deposit program, businesses that have never received a loan under the linked deposit program are given first priority;

(b) Limit the total principal loan amount that any one business receives in qualified loans under the linked deposit program over the lifetime of the businesses;

(c) Limit the total principal loan amount that an owner of one or more businesses receives in qualified loans under the linked deposit program during the owner's lifetime; and

(d) Limit the total amount of any one qualified loan made under the linked deposit program.

**NEW SECTION. Sec. 4.** Sections 1 and 2 of this act expire July 1, 2010."

On page 1, line 1 of the title, after "program;" strike the remainder of the title and insert "amending RCW 43.86A.060; creating new sections; and providing an expiration date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 1167 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 1167, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 1167, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

ENGROSSED HOUSE BILL NO. 1167, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

April 14, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1184 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 35.92.360 and 2002 c 276 s 2 are each amended to read as follows:

(1) Any city or town engaged in the generation, sale, or distribution of energy is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the city or town if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the city or town could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. For the purposes of this section, "conservation purposes in existing structures" may include projects to allow a municipal electric utility's customers to generate all or a portion of their own electricity through the on-site installation of a distributed electricity generation system that uses as its fuel solar, wind, geothermal, or hydropower, or other renewable resource that is available on-site and not from a commercial source. Such projects

shall not be considered "a conversion from one energy source to another" which is limited to the change or substitution of one commercial energy supplier for another commercial energy supplier. Except where otherwise authorized, such assistance shall be limited to:

((+)) (a) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

((+)) (b) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards((-));

((+)) (c) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

((+)) (d) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

((+)) (2) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed ~~((one hundred twenty))~~ two hundred forty months in length.

**Sec. 2.** RCW 54.16.032 and 1989 c 421 s 4 are each amended to read as follows:

Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the district if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the district to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed ~~((one))~~ two hundred ~~((twenty))~~ forty months in length."

On page 1, line 2 of the title, after "utilities" strike the remainder of the title and insert "and public utility districts; and amending RCW 35.92.360 and 54.16.032."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1184 and advanced the bill as amended by the Senate to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1184, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1184, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 94; Nays, 3; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Anderson, Chandler and Taylor.

Excused: Representative Flannigan.

HOUSE BILL NO. 1184, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

April 13, 2009

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1208 with the following amendment:

Strike everything after the enacting clause and insert the following:

**Sec. 1.** RCW 84.40.042 and 2008 c 17 s 1 are each amended to read as follows:

(1) When real property is divided in accordance with chapter 58.17 RCW, the assessor shall carefully investigate and ascertain the true and fair value of each lot and assess each lot on that same basis, unless specifically provided otherwise by law. For purposes of this section, "lot" has the same definition as in RCW 58.17.020.

(a) For each lot on which an advance tax deposit has been paid in accordance with RCW 58.08.040, the assessor shall establish the true and fair value by October 30th of the year following the recording of the plat, replat, or altered plat. The value established shall be the value of the lot as of January 1st of the year the original parcel of real property was last revalued. An additional property tax shall not be due on the land until the calendar year following the year for which the advance tax deposit was paid if the deposit was sufficient to pay the full amount of the taxes due on the property.

(b) For each lot on which an advance tax deposit has not been paid, the assessor shall establish the true and fair value not later than the calendar year following the recording of the plat, map, subdivision, or replat. For purposes of this section, "subdivision" means a division of land into two or more lots.

(c) For each subdivision, all current year and delinquent taxes and assessments on the entire tract must be paid in full in accordance with RCW 58.17.160 and 58.08.030 except when property is being acquired by a government for public use. For purposes of this section, "current year taxes" means taxes that are collectible under RCW 84.56.010 subsequent to ~~((February 14th))~~ completing the tax roll for current year collection.

(2) When the assessor is required by law to segregate any part or parts of real property, assessed before or after July 27, 1997, as one parcel or when the assessor is required by law to combine parcels of real property assessed before or after July 27, 1997, as two or more parcels, the assessor shall carefully investigate and ascertain the true and fair value of each part or parts of the real property and each combined parcel and assess each part or parts or each combined parcel on that same basis.

**Sec. 2.** RCW 84.56.070 and 2007 c 295 s 5 are each amended to read as follows:

~~((On the fifteenth day of February succeeding the levy of taxes,))~~  
The county treasurer shall proceed to collect all personal property taxes after first completing the tax roll for the current year's collection. The treasurer shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid before they become delinquent, the treasurer shall forthwith proceed to collect the same. In the event that he or she is unable to collect the same when due, the treasurer shall prepare papers in distraint, which shall contain a description of the personal property, the amount of taxes, the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner. The treasurer shall without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same, with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and shall proceed to advertise the same by posting written notices in three public places in the county in which such property has been distrained, one of which places shall be at the county court house, such notice to state the time when and place where such property will be sold. The county treasurer, or the treasurer's deputy, shall tax the same fees for making the distraint and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy

and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making distraint. If the taxes for which such property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for such sale, which shall be not less than ten days after the taking of such property, such treasurer or treasurer's designee shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes, with interest and costs, and if there be any excess of money arising from the sale of any personal property, the treasurer shall pay such excess less any cost of the auction to the owner of the property so sold or to his or her legal representative: PROVIDED, That whenever it shall become necessary to distrain any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish trap, pound net, reef net, set net or drag seine fishing location, or any other personal property as the treasurer shall determine to be incapable or reasonably impracticable of manual delivery, it shall be deemed to have been distrained and taken into possession when the treasurer shall have, at least thirty days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located a notice in writing reciting that the treasurer has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of the tax due, with interest, and the time and place of sale; a copy of the notice shall also be sent to the owner or reputed owner at his last known address, by registered letter at least thirty days prior to the date of sale: AND PROVIDED FURTHER, That if the county treasurer has reasonable grounds to believe that any personal property, including mobile homes, manufactured homes, or park model trailers, upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, or is about to be destroyed, sold or disposed of, the county treasurer may demand such taxes, without the notice provided for in this section, and if necessary may forthwith distrain sufficient goods and chattels to pay the same.

**Sec. 3.** RCW 86.09.490 and 1937 c 72 s 164 are each amended to read as follows:

The assessment upon real property shall be a lien against the property assessed, from and after the first day of January in the year in which the assessment becomes due and payable, but as between grantor and grantee such lien shall not attach until the ((fifteenth day of February of such year, which)) county treasurer has completed the property tax roll for the current year's collection and provided the notification required by RCW 84.56.020. The lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except a lien for undelinquent flood control district assessments, diking or drainage, or diking or drainage improvement, district assessments and for unpaid and outstanding general ad valorem taxes, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law.

**Sec. 4.** RCW 84.60.050 and 1994 c 301 s 54 are each amended to read as follows:

(1) When real property is acquired by purchase or condemnation by the state of Washington, any county or municipal corporation or is placed under a recorded agreement for immediate possession and use or an order of immediate possession and use pursuant to RCW 8.04.090, such property shall continue to be subject to the tax lien for the years prior to the year in which the property is so acquired or placed under such agreement or order, of any tax levied by the state, county, municipal corporation or other tax levying public body, except as is otherwise provided in RCW 84.60.070.

(2) The lien for taxes applicable to the real property being acquired or placed under immediate possession and use for the year

in which such real property is so acquired or placed under immediate possession and use shall be for only the pro rata portion of taxes allocable to that portion of the year prior to the date of execution of the instrument vesting title, date of recording such agreement of immediate possession and use, date of such order of immediate possession and use, or date of judgment. No taxes levied or tax lien on such property allocable to a period subsequent to the dates identified in this subsection shall be valid and any such taxes levied shall be canceled as provided in RCW 84.48.065. In the event the owner has paid taxes allocable to that portion of the year subsequent to the dates identified in this subsection he or she shall be entitled to a pro rata refund of the amount paid on the property so acquired or placed under a recorded agreement or an order of immediate possession and use. If the dates identified in this subsection precede ((February 15th of)) the completion of the property tax rolls for the current year's collection in the year in which such taxes become payable, no lien for such taxes shall be valid and any such taxes levied but not payable shall be canceled as provided in RCW 84.48.065.

**Sec. 5.** RCW 87.03.265 and 1939 c 171 s 2 are each amended to read as follows:

The assessment upon real property shall be a lien against the property assessed, from and after the first day of January in the year in which it is levied, but as between grantor and grantee such lien shall not attach until the ((fifteenth day of February of)) county treasurer has completed the property tax roll for the current year's collection and provided the notification required by RCW 84.56.020 in the year in which the assessment is payable, which lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except for a lien for prior assessments, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. And the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue. Also the lien for all payments due or to become due under any contract with the United States, or the state of Washington, accompanying which bonds of the district have not been deposited with the United States or the state of Washington, as in RCW 87.03.140 provided, shall be a preferred lien to any issue of bonds subsequent to the date of such contract.

**Sec. 6.** RCW 87.03.270 and 1988 c 134 s 13 are each amended to read as follows:

The assessment roll, before its equalization and adoption, shall be checked and compared as to descriptions and ownerships, with the county treasurer's land rolls. On or before the fifteenth day of January in each year the secretary must deliver the assessment roll or the respective segregation thereof to the county treasurer of each respective county in which the lands therein described are located, and said assessments shall become due and payable ((on the fifteenth day of February following)) after the county treasurer has completed the property tax roll for the current year's collection and provided the notification required by RCW 84.56.020.

All assessments on said roll shall become delinquent on the first day of May following the filing of the roll unless the assessments are paid on or before the thirtieth day of April of said year: PROVIDED, That if an assessment is ten dollars or more for said year and if one-half of the assessment is paid on or before the thirtieth day of April, the remainder shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date. All delinquent assessments shall bear interest at the rate of twelve percent per annum, computed on a monthly basis and without compounding, from the date of delinquency until paid.



Upon receiving the assessment roll the county treasurer shall prepare therefrom an assessment book in which shall be written the description of the land as it appears in the assessment roll, the name of the owner or owners where known, and if assessed to the unknown owners, then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments.

On or before April 1st of each year, the treasurer of the district shall send a statement of assessments due. County treasurers who collect irrigation district assessments may send the statement of irrigation district assessments together with the statement of general taxes.

Upon payment of any assessment the county treasurer must enter the date of said payment in said assessment book opposite the description of the land and the name of the person paying and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed.

It shall be the duty of the treasurer of the district to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his office upon land described in such request. All statements of irrigation district assessments covering any land in the district shall show the amount of the irrigation district assessment, the dates on which the assessment is due, the place of payment, and, if the property was sold for delinquent assessments in a prior year, the amount of the delinquent assessment and the notation "certificate issued": PROVIDED, That the failure of the treasurer to render any statement herein required of him shall not render invalid any assessments made by any irrigation district.

It shall be the duty of the county treasurer of any county, other than the county in which the office of the board of directors is located, to make monthly remittances to the county treasurer of the county in which the office of the board of directors is located covering all amounts collected by him for the irrigation district during the preceding month.

When the treasurer collects a delinquent assessment, the treasurer shall collect any other amounts due by reason of the delinquency, including accrued costs, which shall be deposited to the treasurer's operation and maintenance fund.

**Sec. 7.** RCW 85.08.480 and 1933 c 125 s 2 are each amended to read as follows:

The respective installments of assessments for construction or maintenance of improvements made under the provisions of this chapter, shall be collected in the same manner and shall become delinquent at the same time as general taxes, certificates of delinquency shall be issued, and the lien of the assessment shall be enforced by foreclosure and sale of the property assessed, as in the case of general taxes, all according to the laws in force on January 1, 1923, except as hereinafter specifically provided.

The annual assessments or installments of assessments, both for construction and for maintenance and repairs of the diking and/or drainage system shall become due in two equal installments, one-half being payable on or before ~~((May))~~ April 30th, and the other half on or before ~~((November 30th))~~ October 31st; and delinquency interest thereon shall run from said dates on said respective halves of said assessments.

The rate of interest thereon after delinquency, also the rate of interest borne by certificates of delinquency, shall be ~~((ten))~~ twelve percent per annum. Certificates of delinquency for any assessment or installment thereof shall be issued upon demand and payment of such delinquent assessment and the fee for the same at any time after

the expiration of twelve months after the date of delinquency thereof. In case no certificate of delinquency be issued after the expiration of four years from date of delinquency of assessments for construction costs, or after the expiration of two years from date of delinquency of assessments for maintenance or repairs, certificates of delinquency shall be issued to the county, and foreclosure thereof shall forthwith be effected in the manner provided in ~~((sections 11292 to 11317 inclusive))~~ chapter 84.64 RCW.

The holder of a certificate of delinquency for any drainage, diking or sewerage improvement district or consolidated district assessment or installment thereof may pay any delinquent general taxes upon the property described therein, and may redeem any certificate of delinquency for general taxes against said property and the amount so paid together with interest thereon at the rate provided by law shall be included in the lien of said certificate of delinquency.

The expense of foreclosure proceedings by the county shall be paid by the districts whose liens are foreclosed: Costs of foreclosure by the county or private persons as provided by law, shall be included in the judgment of foreclosure.

**Sec. 8.** RCW 82.45.090 and 2003 c 53 s 404 are each amended to read as follows:

(1) Except for a sale of a beneficial interest in real property where no instrument evidencing the sale is recorded in the official real property records of the county in which the property is located, the tax imposed by this chapter shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. In collecting the tax the treasurer shall act as agent for the state. The county treasurer shall cause a ~~((stamp))~~ verification of payment evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used floating home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the ~~((stamp))~~ verification of payment affixed thereto; in case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer. Any time there is a sale of a used mobile home, used manufactured home, used park model, or used floating home that has not been title eliminated, property taxes must be current in order to complete the processing of the real estate excise tax affidavit or other documents transferring title. Verification that the property taxes are current must be noted on the mobile home real estate excise tax affidavit or on a form approved by the county treasurer. For the purposes of this subsection, "mobile home," "manufactured home," and "park model" have the same meaning as provided in RCW 59.20.030.

(2) For a sale of a beneficial interest in real property where a tax is due under this chapter and where no instrument is recorded in the official real property records of the county in which the property is located, the sale shall be reported to the department of revenue within five days from the date of the sale on such returns or forms and according to such procedures as the department may prescribe. Such forms or returns shall be signed by both the transferor and the transferee and shall be accompanied by payment of the tax due.

(3) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is guilty of perjury under chapter 9A.72 RCW.

**Sec. 9.** RCW 84.69.030 and 1991 c 245 s 32 are each amended to read as follows:

~~((Except in cases wherein the county legislative authority acts upon its own motion;))~~ No orders for a refund under this chapter shall be made except on a claim:

- (1) Verified by the person who paid the tax, the person's guardian, executor or administrator; and
- (2) Filed with the county treasurer within three years after ~~((making))~~ the due date of the payment sought to be refunded; and
- (3) Stating the statutory ground upon which the refund is claimed.

**NEW SECTION. Sec. 10.** A new section is added to chapter 84.69 RCW to read as follows:

Taxing districts other than the state may levy a tax upon all the taxable property within the district for the purpose of:

- (1) Funding refunds paid or to be paid under this chapter, except for refunds under RCW 84.69.020(1), including interest, as ordered by the county treasurer or county legislative authority within the preceding twelve months; and
- (2) Reimbursing the taxing district for taxes abated under RCW 84.70.010 within the preceding twelve months. This subsection (2) only applies to abatements that do not require a refund under this chapter. Abatements that require a refund are included within the scope of subsection (1) of this section.

**Sec. 11.** RCW 84.55.070 and 1982 1st ex.s. c 28 s 2 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ do not apply to a levy, including the state levy, or that portion of a levy, made by or for a taxing district:

~~((or to be paid pursuant to))~~ under the provisions of chapter 84.68 RCW ~~((or attributable to a property tax refund paid or to be paid pursuant to the provisions of chapter 84.69 RCW;))~~;

~~((or to be paid pursuant to))~~ under section 10 of this act; or

(3) Attributable to amounts of state taxes withheld under RCW 84.56.290 or the provisions of chapter 84.69 RCW, or otherwise attributable to state taxes lawfully owing by reason of adjustments made under RCW 84.48.080.

**NEW SECTION. Sec. 12.** Sections 10 and 11 of this act apply retroactively to January 1, 2009, and apply to taxes levied under section 10 of this act for collection in 2010 and thereafter.

**Sec. 13.** RCW 84.34.037 and 1992 c 69 s 6 are each amended to read as follows:

(1) Applications for classification or reclassification under RCW 84.34.020(1) shall be made to the county legislative authority. An application made for classification or reclassification of land under RCW 84.34.020(1) (b) and (c) which is in an area subject to a comprehensive plan shall be acted upon in the same manner in which an amendment to the comprehensive plan is processed. Application made for classification of land which is in an area not subject to a comprehensive plan shall be acted upon after a public hearing and after notice of the hearing shall have been given by one publication in a newspaper of general circulation in the area at least ten days before the hearing: PROVIDED, That applications for classification of land in an incorporated area shall be acted upon by: (a) A granting authority composed of three members of the county legislative body and three members of the city legislative body in which the land is located in a meeting where members may be physically absent but participating through telephonic connection; or (b) separate affirmative acts by both the county and city legislative bodies where both bodies affirm the entirety of an application without modification or both bodies affirm an application with identical modifications.

(2) In determining whether an application made for classification or reclassification under RCW 84.34.020(1) (b) and (c) should be approved or disapproved, the granting authority may take cognizance of the benefits to the general welfare of preserving the current use of the property which is the subject of application, and shall consider:

(a) The resulting revenue loss or tax shift;

(b) Whether granting the application for land applying under RCW 84.34.020(1)(b) will (i) conserve or enhance natural, cultural, or scenic resources, (ii) protect streams, stream corridors, wetlands, natural shorelines and aquifers, (iii) protect soil resources and unique or critical wildlife and native plant habitat, (iv) promote conservation principles by example or by offering educational opportunities, (v) enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces, (vi) enhance recreation opportunities, (vii) preserve historic and archaeological sites, (viii) preserve visual quality along highway, road, and street corridors or scenic vistas, (ix) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property; and

(c) Whether granting the application for land applying under RCW 84.34.020(1)(c) will (i) either preserve land previously classified under RCW 84.34.020(2) or preserve land that is traditional farmland and not classified under chapter 84.33 or 84.34 RCW, (ii) preserve land with a potential for returning to commercial agriculture, and (iii) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of property.

(3) If a public benefit rating system is adopted under RCW 84.34.055, the county legislative authority shall rate property for which application for classification has been made under RCW 84.34.020(1) (b) and (c) according to the public benefit rating system in determining whether an application should be approved or disapproved, but when such a system is adopted, open space properties then classified under this chapter which do not qualify under the system shall not be removed from classification but may be rated according to the public benefit rating system.

(4) The granting authority may approve the application with respect to only part of the land which is the subject of the application. If any part of the application is denied, the applicant may withdraw the entire application. The granting authority in approving in part or whole an application for land classified or reclassified pursuant to RCW 84.34.020(1) may also require that certain conditions be met, including but not limited to the granting of easements. As a condition of granting open space classification, the legislative body may not require public access on land classified under RCW 84.34.020(1)(b)(iii) for the purpose of promoting conservation of wetlands.

(5) The granting or denial of the application for current use classification or reclassification is a legislative determination and shall be reviewable only for arbitrary and capricious actions.

**Sec. 14.** RCW 84.34.041 and 2002 c 315 s 2 are each amended to read as follows:

An application for current use classification or reclassification under RCW 84.34.020(3) shall be made to the county legislative authority.

(1) The application shall be made upon forms prepared by the department of revenue and supplied by the granting authority and shall include the following elements that constitute a timber management plan:

(a) A legal description of, or assessor's parcel numbers for, all land the applicant desires to be classified as timber land;

- (b) The date or dates of acquisition of the land;
  - (c) A brief description of the timber on the land, or if the timber has been harvested, the owner's plan for restocking;
  - (d) Whether there is a forest management plan for the land;
  - (e) If so, the nature and extent of implementation of the plan;
  - (f) Whether the land is used for grazing;
  - (g) Whether the land has been subdivided or a plat filed with respect to the land;
  - (h) Whether the land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;
  - (i) Whether the land is subject to forest fire protection assessments pursuant to RCW 76.04.610;
  - (j) Whether the land is subject to a lease, option, or other right that permits it to be used for a purpose other than growing and harvesting timber;
  - (k) A summary of the past experience and activity of the applicant in growing and harvesting timber;
  - (l) A summary of current and continuing activity of the applicant in growing and harvesting timber;
  - (m) A statement that the applicant is aware of the potential tax liability involved when the land ceases to be classified as timber land.
- (2) An application made for classification of land under RCW 84.34.020(3) shall be acted upon after a public hearing and after notice of the hearing is given by one publication in a newspaper of general circulation in the area at least ten days before the hearing. Application for classification of land in an incorporated area shall be acted upon by: (a) A granting authority composed of three members of the county legislative body and three members of the city legislative body in which the land is located in a meeting where members may be physically absent but participating through telephonic connection; or (b) separate affirmative acts by both the county and city legislative bodies where both bodies affirm the entirety of an application without modification or both bodies affirm an application with identical modifications.
- (3) The granting authority shall act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily being determinative, except that the application may be denied for one of the following reasons, without regard to other items:
- (a) The land does not contain a stand of timber as defined in chapter 76.09 RCW and applicable rules, except this reason shall not alone be sufficient to deny the application (i) if the land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or the longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within the land do not meet minimum standards due to rock outcroppings, swamps, unproductive soil, or other natural conditions;
  - (b) The applicant, with respect to the land, has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;
  - (c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line.
- (4) The timber management plan must be filed with the county legislative authority either: (a) When an application for classification under this chapter is submitted; (b) when a sale or transfer of timber land occurs and a notice of continuance is signed; or (c) within sixty

days of the date the application for reclassification under this chapter or from designated forest land is received. The application for reclassification shall be accepted, but shall not be processed until the timber management plan is received. If the timber management plan is not received within sixty days of the date the application for reclassification is received, the application for reclassification shall be denied.

If circumstances require it, the county assessor may allow in writing an extension of time for submitting a timber management plan when an application for classification or reclassification or notice of continuance is filed. When the assessor approves an extension of time for filing the timber management plan, the county legislative authority may delay processing an application until the timber management plan is received. If the timber management plan is not received by the date set by the assessor, the application or the notice of continuance shall be denied.

The granting authority may approve the application with respect to only part of the land that is described in the application, and if any part of the application is denied, the applicant may withdraw the entire application. The granting authority, in approving in part or whole an application for land classified pursuant to RCW 84.34.020(3), may also require that certain conditions be met.

Granting or denial of an application for current use classification is a legislative determination and shall be reviewable only for arbitrary and capricious actions. The granting authority may not require the granting of easements for land classified pursuant to RCW 84.34.020(3).

The granting authority shall approve or disapprove an application made under this section within six months following the date the application is received."

On page 1, line 1 of the title, after "administration;" strike the remainder of the title and insert "amending RCW 84.40.042, 84.56.070, 86.09.490, 84.60.050, 87.03.265, 87.03.270, 85.08.480, 82.45.090, 84.69.030, 84.55.070, 84.34.037, and 84.34.041; adding a new section to chapter 84.69 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1208 and advanced the bill as amended by the Senate to final passage.

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

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

There being no objection, the House deferred action on ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1208, and the bill held its place on the concurrence dispute calendar.

#### MESSAGE FROM THE SENATE

April 7, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1215 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 19.118.021 and 2007 c 425 s 1 are each amended to read as follows:

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

(1) "Board" means new motor vehicle arbitration board.

(2) "Collateral charges" means any sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rustproofing, or factory or dealer installed options.

(3) "Condition" means a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

(4) "Consumer" means any person who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during the duration of the (~~warranty~~) eligibility period defined under this section.

(5) "Court" means the superior court in the county where the consumer resides, except if the consumer does not reside in this state, then the superior court in the county where an arbitration hearing or determination was conducted or made pursuant to this chapter.

(6) "Eligibility period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first.

(7) "Incidental costs" means any reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation.

~~((7))~~ (8) "Manufacturer" means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers. "Manufacturer" includes to the extent the modification affects the use, value, or safety of a new motor vehicle, a postmanufacturing modifier of a new motor vehicle that modifies or has a modification done to a new motor vehicle before the initial retail sale or lease of a new motor vehicle, except as provided in this chapter. "Manufacturer" does not include any person engaged in the business of set-up of motorcycles as an agent of a new motor vehicle dealer if the person does not otherwise construct or assemble motorcycles.

~~((8))~~ (9) "Motorcycle" means any motorcycle as defined in RCW 46.04.330 which has an engine displacement of at least seven hundred fifty cubic centimeters.

~~((9))~~ (10) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use, built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

~~((10))~~ (11) "Motor home manufacturer" means the first stage manufacturer, the component manufacturer, and the final stage manufacturer.

(a) "First stage manufacturer" means a person who manufactures incomplete new motor vehicles such as chassis, chassis cabs, or vans,

that are directly warranted by the first stage manufacturer to the consumer, and are completed by a final stage manufacturer into a motor home.

(b) "Component manufacturer" means a person who manufactures components used in the manufacture or assembly of a chassis, chassis cab, or van that is completed into a motor home and whose components are directly warranted by the component manufacturer to the consumer.

(c) "Final stage manufacturer" means a person who assembles, installs, or permanently affixes a body, cab, or equipment to an incomplete new motor vehicle such as a chassis, chassis cab, or van provided by a first stage manufacturer, to complete the vehicle into a motor home.

~~((11))~~ (12) "New motor vehicle" means any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways that was originally purchased or leased at retail from a new motor vehicle dealer or leasing company in this state, but does not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement. This chapter shall apply to a motor vehicle purchased or leased with a manufacturer written warranty by a member of the armed forces regardless of in which state the vehicle was purchased or leased, if the vehicle otherwise meets the definition of a new motor vehicle and the consumer is a member of the armed forces stationed or residing in this state at the time the consumer submits a request for arbitration to the attorney general. If the motor vehicle is a motor home, this chapter shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or maintained primarily as a mobile dwelling, office, or commercial space. The term "new motor vehicle" does not include trucks with nineteen thousand pounds or more gross vehicle weight rating. The term "new motor vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

~~((12))~~ (13) "New motor vehicle dealer" means a person who holds a dealer agreement with a manufacturer for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, servicing, exchanging, or dealing in new motor vehicles, and who is licensed or required to be licensed as a vehicle dealer by the state of Washington.

~~((13))~~ (14) "Nonconformity" means a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of a new motor vehicle, but does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

~~((14))~~ (15) "Purchase price" means the cash price of the new motor vehicle appearing in the sales agreement or contract.

(a) "Purchase price" in the instance of a lease means the actual written capitalized cost disclosed to the consumer contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement the "purchase price" is the manufacturer's suggested retail price including manufacturer installed accessories or items of optional equipment displayed on the manufacturer label, required by 15 U.S.C. Sec. 1232.

(b) "Purchase price" in the instance of both a vehicle purchase or lease agreement includes any allowance for a trade-in vehicle but does not include any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase or lease cost.

Where the consumer is a subsequent transferee and the consumer selects repurchase of the motor vehicle, "purchase price"

means the consumer's subsequent purchase price. Where the consumer is a subsequent transferee and the consumer selects replacement of the motor vehicle, "purchase price" means the original purchase price.

~~((15))~~ (16) "Reasonable offset for use" means the definition provided in RCW 19.118.041(1)(c) ~~((for a new motor vehicle other than a new motorcycle. The reasonable offset for use for a new motorcycle shall be computed by the number of miles that the vehicle traveled before the manufacturer's acceptance of the vehicle upon repurchase or replacement multiplied by the purchase price, and divided by twenty-five thousand)).~~

~~((16))~~ (17) "Reasonable number of attempts" means the definition provided in RCW 19.118.041.

~~((17))~~ (18) "Replacement motor vehicle" means a new motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

~~((18))~~ (19) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

~~((19))~~ (20) "Subsequent transferee" means a consumer who acquires a motor vehicle, within the ~~((warranty))~~ eligibility period, as defined in this section, with an applicable manufacturer's written warranty and where the vehicle otherwise met the definition of a new motor vehicle at the time of original retail sale or lease.

~~((20))~~ (21) "Substantially impair" means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable motor vehicles.

~~((21))~~ (22) "Warranty" means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, a modification by a new motor vehicle dealer installing the new motor vehicle manufacturer's authorized parts or their equivalent for the specific new motor vehicle pursuant to the manufacturer approved specifications, and fitness of a new motor vehicle for ordinary use or reasonably intended purposes throughout the duration of the ~~((warranty))~~ eligibility period as defined under this section.

~~((22))~~ "Warranty period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first.)

**Sec. 2.** RCW 19.118.031 and 1998 c 298 s 3 are each amended to read as follows:

(1) The manufacturer shall publish an owner's manual and provide it to the new motor vehicle dealer or leasing company. The owner's manual shall include a list of the addresses and phone numbers for the manufacturer's customer assistance division, or zone or regional offices. A manufacturer shall provide to the new motor vehicle dealer or leasing company all applicable manufacturer's written warranties. The dealer or leasing company shall transfer to the consumer, at the time of original retail sale or lease, the owner's manual and applicable written warranties as provided by a manufacturer.

(2) At the time of purchase, the new motor vehicle dealer shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be

prepared and supplied by the attorney general and shall contain a toll-free number that the consumer can contact for information regarding the procedures and remedies under this chapter. In the event a consumer requests modification of the new motor vehicle in a manner which may partially or completely void the manufacturer's implied or express warranty, and which becomes part of the basis of the bargain of the initial retail sale or lease of the vehicle, a new motor vehicle dealer shall provide a clear and conspicuous written disclosure, independently signed and dated by the consumer, stating "Your requested modification may void all or part of a manufacturer warranty and a resulting defect or condition may not be subject to remedies afforded by the motor vehicle warranties act, chapter 19.118 RCW." A dealer who obtains a signed written disclosure under circumstances where the warranty may be void is not subject to this chapter as a manufacturer to the extent the modification affects the use, value, or safety of a new motor vehicle. Failure to provide the disclosure specified in this subsection does not constitute a violation of chapter 19.86 RCW.

(3) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity during the term of the ~~((warranty))~~ eligibility period or the period of coverage of the applicable manufacturer's written warranty, whichever is less, to the manufacturer, its agent, or the new motor vehicle dealer who sold the new motor vehicle, the manufacturer, its agent, or the new motor vehicle dealer shall make repairs as are necessary to conform the vehicle to the warranty, regardless of whether such repairs are made after the expiration of the ~~((warranty))~~ eligibility period. Any corrections or attempted repairs undertaken by a new motor vehicle dealer under this chapter shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under the manufacturer's written warranty is billed. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(4) Upon request from the consumer, the manufacturer or new motor vehicle dealer shall provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding inspection, diagnosis, or test-drive of the consumer's new motor vehicle, or shall provide a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, component, or the performance thereof.

(5) The new motor vehicle dealer shall provide to the consumer each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the vehicle including but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer.

(6) No manufacturer, its agent, or the new motor vehicle dealer may refuse to diagnose or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.

(7) For purposes of this chapter, consumers shall have the rights and remedies, including a cause of action, against manufacturers as provided in this chapter.

(8) The ~~((warranty))~~ eligibility period and thirty-day out-of-service period, and sixty-day out-of-service period in the case of a motor home, shall be extended by any time that repair services are

not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster.

**Sec. 3.** RCW 19.118.041 and 2007 c 426 s 1 are each amended to read as follows:

(1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, registration fees, and refund of any incidental costs. Compensation for a reasonable offset for use shall be paid by the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

(b) When repurchasing the new motor vehicle, the manufacturer shall refund to the consumer the purchase price, all collateral charges, and incidental costs, less a reasonable offset for use. When repurchasing the new motor vehicle, in the instance of a lease, the manufacturer shall refund to the consumer all payments made by the consumer under the lease including but not limited to all lease payments, trade-in value or inception payment, security deposit, all collateral charges and incidental costs less a reasonable offset for use. The manufacturer shall make such payment to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle and upon the lessor's and/or lienholder's receipt of that payment and payment by the consumer of any late payment charges, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer during the time between the original purchase, lease, or in-service date and the date beginning the first attempt to diagnose or repair a nonconformity which ultimately results in the repurchase or replacement of the vehicle multiplied times the purchase price, and dividing the product by one hundred twenty thousand, except in the case of a motor home, in which event it shall be divided by ninety thousand or in the case of a motorcycle, it shall be divided by twenty-five thousand. However, the reasonable offset for use calculation total for a motor home is subject to modification by the board by decreasing or increasing the offset total up to a maximum of one-third of the offset total. The board may modify the offset total in those circumstances where the board determines that the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home. Except in the case of a motor home, where a manufacturer repurchases or replaces a vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the fifteenth cumulative calendar day out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor

vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be limited to the period between the date of purchase, lease by, or transfer to the consumer and the date of the consumer's initial attempt to obtain diagnosis or repair of a nonconformity which ultimately results in the repurchase or replacement of the vehicle or which adds to thirty or more cumulative calendar days out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in-service date and the first attempt to diagnose or repair a nonconformity which ultimately results in the replacement of the vehicle. Except in the case of a motor home, where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the manufacturer replaces the vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in service date and the date of the fifteenth cumulative calendar day out of service.

(d) In the case of a motor vehicle that is a motor home, where a manufacturer repurchases or replaces a motor home from the first purchaser, lessee, or transferee or from the second or subsequent purchaser, lessee, or transferee solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that a motor home traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the thirtieth cumulative calendar day out-of-service.

(2) Reasonable number of attempts, except in the case of a new motor vehicle that is a motor home (~~acquired after June 30, 1998~~), shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the (~~warranty~~) eligibility period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; ~~((or))~~ (c) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty; or (d) within a twelve-month period, two or more different serious safety defects, each of which have been subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the period of coverage of the applicable manufacturer's written warranty and within the eligibility period. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first. A new motor vehicle is deemed to have been "subject to diagnose or repair" when a consumer presents the new motor vehicle for warranty service at a service and repair facility authorized, designated, or maintained by a manufacturer to provide warranty services or a facility to which the manufacturer or an authorized facility has directed the consumer to obtain warranty service. A new

motor vehicle has not been "subject to diagnose or repair" if the consumer refuses to allow the facility to attempt or complete a recommended warranty repair, or demands return of the vehicle to the consumer before an attempt to diagnose or repair can be completed.

(3)(a) In the case of a new motor vehicle that is a motor home (~~acquired after June 30, 1998~~), a reasonable number of attempts shall be deemed to have been undertaken by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers to conform the new motor vehicle to the warranty within the (~~warranty~~) eligibility period, if: (i) The same serious safety defect has been subject to diagnosis or repair one or more times during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to repair three or more times, at least one of which is during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the nonconformity continues to exist; (~~or~~) (iii) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including a safety evaluation, for a cumulative total of sixty calendar days aggregating all motor home manufacturer days out of service, and the motor home manufacturers have had at least one opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities after receipt of notification from the consumer as provided for in (c) of this subsection; or (iv) within a twelve-month period, two or more different serious safety defects covered by the same manufacturer warranty have been each subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the period of coverage of the applicable manufacturer's written warranty and within the eligibility period. Notice of manifestation of one or more serious safety defects to a manufacturer must be provided in writing by the consumer to the motor home manufacturer whose warranty covers the defect or all manufacturers of the motor home. The consumer shall send notices to the manufacturers in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete a comprehensive safety evaluation of the motor home. Notice of the manifestation of one or more serious safety defects should be made by the consumer as a unique notice to the manufacturers. The notice may be met by any written notification under this subsection of the need to repair a defect or condition identified by the consumer as relating to the safety of the motor home with or without a consumer's specific reference to whether the defect is a serious safety defect. Any notice of the manifestation of one or more serious safety defects shall be considered by a manufacturer as a consumer's request for a safety evaluation of the motor home. If the manufacturer, at its option, performs a safety evaluation, the manufacturers must provide a written report to the consumer of the evaluation of the motor home's safety in a timely manner. For purposes of this subsection, each motor home manufacturer's written warranty must be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(b) In the case of a new motor vehicle that is a motor home, after one attempt has been made to repair a serious safety defect, or after three attempts have been made to repair the same nonconformity, the consumer shall give written notification of the need to repair the nonconformity to each of the motor home manufacturers at their

respective corporate, zone, or regional office addresses to allow the motor home manufacturers to coordinate and complete a final attempt to cure the nonconformity. The motor home manufacturers each have fifteen days, commencing upon receipt of (~~the~~) a notification under this subsection (3)(b), to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. The motor home manufacturers have a cumulative total of thirty days, commencing upon delivery of the vehicle to the designated repair facility by the consumer, to conform the vehicle to the applicable motor home manufacturer's written warranty. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to a final attempt to cure the nonconformity.

(c) In the case of a new motor vehicle that is a motor home, if the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including any safety evaluation, by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers for a cumulative total of thirty or more days aggregating all motor home manufacturer days out of service, the consumer shall so notify each motor home manufacturer in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities. The motor home manufacturers have fifteen days, commencing upon receipt of the notification, to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. Once the buyer delivers the vehicle to the designated repair facility, the inspection and repairs must be completed by the motor home manufacturers either (i) within ten days or (ii) before the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for sixty days, whichever time period is longer. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to at least one opportunity to inspect and repair the vehicle's nonconformities after receipt of notification from the buyer as provided for in this subsection (3)(c).

(4) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. (~~Consumers shall not have a cause of action against dealers under this chapter, but a violation of any responsibilities imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW.~~) A violation of any responsibilities expressly imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Except in the limited circumstances of a dealer becoming a manufacturer due to a postmanufacturing modification of a new motor vehicle as defined in RCW 19.118.021(8), consumers shall not have a cause of action against dealers under this chapter. Consumers may pursue rights and

remedies against dealers under any other law, including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter.

**Sec. 4.** RCW 19.118.061 and 1998 c 298 s 5 are each amended to read as follows:

(1) A manufacturer shall be prohibited from reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the first subsequent resale that the defect has been corrected.

(2) Before any sale or transfer of a vehicle that has been replaced or repurchased by the manufacturer ~~((that was determined or adjudicated as having a nonconformity or to have been out of service for thirty or more calendar days, or sixty or more calendar days in the case of a motor home;))~~ after a determination, adjudication, or settlement of a claim under this chapter, the manufacturer shall:

(a) Notify the attorney general ((and the department of licensing, by certified mail or by personal service;)) upon receipt of the motor vehicle and submit a title application to the department of licensing in this state for title to the motor vehicle in the name of the manufacturer within sixty days;

(b) Attach a resale disclosure notice to the vehicle in a manner and form to be specified by the attorney general. Only the retail purchaser may remove the resale disclosure notice after execution of the disclosure form required under subsection (3) of this section; and

(c) Notify the attorney general and the department of licensing if the nonconformity in the motor vehicle is corrected.

(3) Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle and which was previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of said final determination, adjudication or settlement, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity in a manner to be specified by the attorney general, and the department of licensing shall place on the certificate of title information indicating the vehicle was returned under this chapter.

(4) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and ~~((upon))~~ the manufacturer's ~~((request and payment of any fees))~~ application for title in the name of the manufacturer under this section, the department of licensing shall issue a new title with ~~((information))~~ a title brand indicating the vehicle was returned under this chapter and information that the nonconformity has been corrected. Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle, as provided under ~~((subsection (2)(c) of))~~ this section, the manufacturer shall warrant upon the resale that the nonconformity has been corrected, and the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of the corrected nonconformity, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity and indicating that it has been corrected in a manner to be specified by the attorney general.

(5) After repurchase or replacement and following a manufacturer's receipt of a vehicle under this section and prior to a vehicle's first subsequent retail transfer by resale or lease, any intervening transferor of a vehicle subject to the requirements of this section who has received the disclosure, correction and warranty documents, as specified by the attorney general and required under this chapter, shall deliver the documents with the vehicle to the next transferor, purchaser or lessee to ensure proper and timely notice and

disclosure. Any intervening transferor who fails to comply with this subsection shall, at the option of the subsequent transferor or first subsequent retail purchaser or lessee: (a) Indemnify any subsequent transferor or first subsequent retail purchaser for all damages caused by such violation; or (b) repurchase the vehicle at the full purchase price including all fees, taxes and costs incurred for goods and services which were included in the subsequent transaction.

**Sec. 5.** RCW 19.118.080 and 1998 c 245 s 7 are each amended to read as follows:

(1) Except as provided in RCW 19.118.160, the attorney general shall contract with one or more ~~((private))~~ entities to conduct arbitration proceedings in order to settle disputes between consumers and manufacturers as provided in this chapter, and each ~~((private))~~ entity shall constitute a new motor vehicle arbitration board for purposes of this chapter. The entities shall not be affiliated with any manufacturer or new motor vehicle dealer and shall have available the services of persons with automotive technical expertise to assist in resolving disputes under this chapter. No ~~((private))~~ entity or its officers or employees conducting board proceedings and no arbitrator presiding at such proceedings shall be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Payment to the entities for the arbitration services shall be made from the new motor vehicle arbitration account.

(2) The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by ~~((a private))~~ an entity or by the attorney general pursuant to RCW 19.118.160, which rules shall include but not be limited to the following procedures:

(a) At all arbitration proceedings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the dispute, to cross-examine witnesses, and to be represented by counsel.

(b) A dealer, manufacturer, or other persons shall produce records and documents requested by a party which are reasonably related to the dispute. If a dealer, manufacturer, or other person refuses to comply with such a request, a party may present a request ~~((to the board))~~ for the attorney general to issue a subpoena ~~((on behalf of the board))~~.

The subpoena shall be issued only for the production of records and documents which the ~~((board))~~ attorney general has determined are reasonably related to the dispute, including but not limited to documents described in RCW 19.118.031 (4) or (5).

If a party fails to comply with the subpoena, the arbitrator may at the outset of the arbitration hearing impose any of the following sanctions: (i) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena; (ii) refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence; (iii) strike claims or defenses, or parts thereof; or (iv) render a decision by default against the disobedient party.

If a nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general ~~((shall))~~ may enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed.

(c) A party may obtain written affidavits from employees and agents of a dealer, a manufacturer or other party, or from other potential witnesses, and may submit such affidavits for consideration by the board.



(d) Records of the board proceedings shall be open to the public. The hearings shall be open to the public to the extent practicable.

(e) ~~((Where the board proceedings are conducted by one or more private entities.))~~ A single arbitrator may be designated to preside at such proceedings.

(3) A consumer shall exhaust the new motor vehicle arbitration board remedy or informal dispute resolution settlement procedure under RCW 19.118.150 before filing any superior court action.

(4) The attorney general shall maintain records of each dispute submitted to the new motor vehicle arbitration board, including an index of new motor vehicles by year, make, and model.

(5) The attorney general shall compile aggregate annual statistics for all disputes submitted to, and decided by, the new motor vehicle arbitration board, as well as annual statistics for each manufacturer that include, but shall not be limited to, the number and percent of: (a) Replacement motor vehicle requests; (b) purchase price refund requests; (c) replacement motor vehicles obtained in prehearing settlements; (d) purchase price refunds obtained in prehearing settlements; (e) replacement motor vehicles awarded in arbitration; (f) purchase price refunds awarded in arbitration; (g) board decisions neither complied with during the forty calendar day period nor petitioned for appeal within the thirty calendar day period; (h) board decisions appealed categorized by consumer or manufacturer; (i) the nature of the court decisions and who the prevailing party was; (j) appeals that were held by the court to be brought without good cause; and (k) appeals that were held by the court to be brought solely for the purpose of harassment. The statistical compilations shall be public information.

(6) The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter, including but not limited to rules which provide:

(a) A board shall find that a nonconformity exists if it determines that the consumer's new motor vehicle has a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of the vehicle.

(b) A board shall find that a reasonable number of attempts to repair a nonconformity have been undertaken if ~~((i) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (iii) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first))~~ the history of attempts to diagnose or repair defects or conditions in the new motor vehicle meets or exceeds those identified in RCW 19.118.041.

(c) A board shall find that a manufacturer has failed to comply with RCW 19.118.041 if it finds that the manufacturer, its agent, or the new motor vehicle dealer has failed to correct a nonconformity after a reasonable number of attempts and the manufacturer has failed, within forty days of the consumer's written request, to repurchase the vehicle or replace the vehicle with a vehicle identical or reasonably equivalent to the vehicle being replaced.

(7) The attorney general shall provide consumers with information regarding the procedures and remedies under this chapter.

**Sec. 6.** RCW 19.118.090 and 1998 c 298 s 6 are each amended to read as follows:

(1) A consumer may request arbitration under this chapter by submitting the request to the attorney general. Within ten days after receipt of an arbitration request, the attorney general shall make a reasonable determination of the cause of the request for arbitration and provide necessary information to the consumer regarding the consumer's rights and remedies under this chapter. The attorney general shall ~~((assign the dispute to a board, except that if it clearly appears from the materials submitted by the consumer that the dispute is not eligible for arbitration, the attorney general may refuse to assign the dispute and shall explain any required procedures to the consumer))~~ accept a request for arbitration, except where it clearly appears from the materials submitted by the consumer that the dispute is not eligible because it is lacking a statement of a claim, incomplete, untimely, frivolous, fraudulent, filed in bad faith, res judicata, or beyond the authority established in this chapter. A dispute found to be ineligible for arbitration because it lacks a statement of a claim or is incomplete may be reconsidered by the attorney general upon the submission of other information or documents regarding the dispute.

(2) After a dispute is accepted, the attorney general shall assign the dispute to the board. From the date the consumer's request for arbitration is assigned by the attorney general, the board shall have forty-five calendar days to have an arbitrator hear the dispute and sixty days for the board to submit a decision to the attorney general. If the board determines that additional information is necessary to make a fair and reasoned decision, the arbitrator may continue the arbitration proceeding on a subsequent date within ten calendar days of the initial hearing. The board may require a party to submit additional information or request that the attorney general issue a subpoena to a nonparty for documents and records for a continued hearing.

~~((2))~~ (3) Manufacturers shall submit to arbitration if such arbitration is requested by the consumer within thirty months from the date of the original delivery of the new motor vehicle to a consumer at retail and if the consumer's dispute is ~~((deemed eligible))~~ accepted for arbitration by the ((board)) attorney general. In the case of a motor home, the thirty-month period will be extended by the amount of time it takes the motor home manufacturers to complete the final repair attempt at the designated repair facility as provided for in RCW 19.118.041(3)(b).

~~((3))~~ The new motor vehicle arbitration board may reject for arbitration any dispute that it determines to be frivolous, fraudulent, filed in bad faith, res judicata or beyond its authority. Any dispute deemed by the board to be ineligible for arbitration due to insufficient evidence may be reconsidered by the board upon the submission of other information or documents regarding the dispute that would allegedly qualify for relief under this chapter. Following a second review, the board may reject the dispute for arbitration if evidence is still clearly insufficient to qualify the dispute for relief under this chapter. A rejection by the board is subject to review by the attorney general or may be appealed under RCW 19.118.100.

A decision to reject any dispute for arbitration shall be sent by certified mail to the consumer and the manufacturer, and shall contain a brief explanation as to the reason therefor.

(4) The manufacturer shall complete a written manufacturer response to the consumer's request for arbitration. The manufacturer shall provide a response to the consumer and the ~~((board))~~ attorney general within ten calendar days from the date of the manufacturer's

receipt of ~~((the board's))~~ notice of ~~((acceptance))~~ the attorney general's assignment of a dispute for arbitration. The manufacturer response shall include all issues and affirmative defenses related to the nonconformities identified in the consumer's request for arbitration that the manufacturer intends to raise at the arbitration hearing.

~~(5) ((The arbitration board shall award the remedies under RCW 19.118.041 if it finds a nonconformity and that a reasonable number of attempts have been undertaken to correct the nonconformity. The board shall award reasonable costs and attorneys' fees incurred by the consumer where the manufacturer has been directly represented by counsel: (a) In dealings with the consumer in response to a request to repurchase or replace under RCW 19.118.041; (b) in settlement negotiations; (c) in preparation of the manufacturer's statement; or (d) at an arbitration board hearing or other board proceeding.~~

~~— In the case of an arbitration involving a motor home, the board may allocate liability among the motor home manufacturers.~~

~~(6) It is an affirmative defense to any claim under this chapter that: (a) The alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle; or (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.~~

~~(7) The board shall have forty-five calendar days from the date the board receives the consumer's request for arbitration to hear the dispute. If the board determines that additional information is necessary, the board may continue the arbitration proceeding on a subsequent date within ten calendar days of the initial hearing. The board shall decide the dispute within sixty calendar days from the date the board receives the consumer's request for arbitration.) It is an affirmative defense to any claim under this chapter that: (a) The alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle; or (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.~~

~~(6) The arbitration decision ((of the board shall be delivered by certified mail or personal service to the consumer and the manufacturer, and shall)) must contain a written finding of whether the new motor vehicle ((meets)) should be repurchased or replaced pursuant to the standards set forth under this chapter.~~

~~((8)) (a) The board shall award the remedies under this chapter if a finding is made pursuant to RCW 19.118.041 that one or more nonconformities have been subject to a reasonable number of attempts.~~

~~(b) If the board awards remedies under this chapter after a finding is made pursuant to RCW 19.118.041 that one or more nonconformities have been subject to a reasonable number of attempts, the board shall award reasonable costs and attorneys' fees incurred by the consumer where the manufacturer has been directly represented by counsel: (i) In dealings with the consumer in response to a request to repurchase or replace under RCW 19.118.041; (ii) in settlement negotiations; (iii) in preparation of the manufacturer's statement; or (iv) at an arbitration hearing or other arbitration proceeding. In the case of an arbitration involving a motor home, the board may allocate liability among the motor home manufacturers.~~

~~(c) The decision of the board shall be submitted to the attorney general who shall deliver it by certified mail, electronic mail confirmed by an electronic notice of delivery status or similar confirmation, or personal service to the consumer and the manufacturer.~~

~~(7) The consumer may accept or reject the arbitration board decision ((or appeal to superior court, pursuant to RCW 19.118.100)). Upon acceptance by the consumer, the arbitration~~

board decision shall become final. The consumer shall send written notification of acceptance or rejection to the ~~((arbitration board))~~ attorney general within sixty days of receiving the decision and the ~~((arbitration board))~~ attorney general shall immediately deliver a copy of the consumer's acceptance to the manufacturer by certified mail, return receipt requested, electronic mail confirmed by an electronic notice of delivery status or similar confirmation, or by personal service. Failure of the consumer to respond to the ~~((arbitration board))~~ attorney general within sixty calendar days of receiving the decision shall be considered a rejection of the decision by the consumer.

~~(8) Where a consumer rejects an arbitration decision, the consumer may appeal to superior court pursuant to RCW 19.118.100.~~ The consumer shall have one hundred twenty calendar days from the date of rejection to file a petition of appeal in superior court. At the time the petition of appeal is filed, the consumer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general.

(9) Upon receipt of the consumer's acceptance, the manufacturer shall have forty calendar days to comply with the arbitration board decision or thirty calendar days to file a petition of appeal in superior court. At the time the petition of appeal is filed, the manufacturer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general. If the attorney general receives no notice of petition of appeal after forty calendar days, the attorney general shall contact the consumer to verify compliance.

**Sec. 7.** RCW 19.118.095 and 1995 c 254 s 8 are each amended to read as follows:

(1) Compliance with an arbitration board decision under this chapter must be accomplished at a time, place, and in a manner to be determined by the mutual agreement of the consumer and manufacturer.

(a) The consumer shall make the motor vehicle available to the manufacturer free of damage other than that related to any nonconformity, defect, or condition to which a warranty applied, or that can reasonably be expected in the use of the vehicle for ordinary or reasonably intended purposes and in consideration of the ~~((mileage attributable to the consumer's use))~~ miles traveled by the vehicle. Any insurance claims or settlement proceeds for repair of damage to the vehicle due to fire, theft, vandalism, or collision must be assigned to the manufacturer or, at the consumer's option, the repair must be completed before return of the vehicle to the manufacturer.

The consumer may not remove any equipment or option that was included in the original purchase or lease of the vehicle or that is otherwise included in the repurchase or replacement award. In removing any equipment not included in the original purchase or lease, the consumer shall exercise reasonable care to avoid further damage to the vehicle but is not required to return the vehicle to original condition.

(b) At the time of compliance with an arbitration board decision that awards repurchase, the manufacturer shall make full payment to the consumers and either the lessor or lienholder, or both, or provide verification to the consumer of prior payment to either the lessor or lienholder, or both.

At the time of compliance with an arbitration board decision that awards replacement, the manufacturer shall provide the replacement vehicle together with any refund of incidental costs.

(c) At any time before compliance a party may request the ~~((board))~~ attorney general to resolve disputes regarding compliance with the arbitration board decision including but not limited to time and place for compliance, condition of the vehicle to be returned, clarification or recalculation of refund amounts under the award, or

a determination if an offered vehicle is reasonably equivalent to the vehicle being replaced. The attorney general may resolve the dispute or refer compliance-related disputes to the board pursuant to RCW 19.118.160 for a compliance dispute hearing and decision. In resolving compliance disputes the attorney general or board may not review, alter, or otherwise change the findings of a decision or extend the time for compliance beyond the time necessary (~~for the board~~) to resolve the dispute.

(d) Failure of the consumer to make the vehicle available within sixty calendar days in response to a manufacturer's unconditional tender of compliance is considered a rejection of the arbitration decision by the consumer, except as provided in (c) of this subsection or subsection (2) of this section.

(2) If, at the end of the forty calendar day period, neither compliance with nor a petition to appeal the board's decision has occurred, the attorney general may impose a fine of up to one thousand dollars per day until compliance occurs or a maximum penalty of one hundred thousand dollars accrues unless the manufacturer can provide clear and convincing evidence that any delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide the evidence or fails to pay the fine, the attorney general may initiate proceedings against the manufacturer for failure to pay any fine that accrues until compliance with the board's decision occurs or the maximum penalty of one hundred thousand dollars results. If the attorney general prevails in an enforcement action regarding any fine imposed under this subsection, the attorney general is entitled to reasonable costs and attorneys' fees. Fines and recovered costs and fees shall be returned to the new motor vehicle arbitration account.

**Sec. 8.** RCW 19.118.120 and 1987 c 344 s 10 are each amended to read as follows:

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter (~~shall constitute~~) is not reasonable in relation to the development and preservation of business and is an unfair or deceptive (~~trade practice affecting the public interest under~~) act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. (~~All public and private remedies provided under that chapter shall be available to enforce this chapter.~~)

**Sec. 9.** RCW 19.118.160 and 1989 c 347 s 9 are each amended to read as follows:

If the attorney general is unable (~~at any time~~) to contract with (~~private~~) one or more entities to conduct arbitrations (~~under the procedures and standards in this chapter~~), the attorney general shall establish (~~one or more new motor vehicle~~) an arbitration (~~boards. Each such board shall consist of three members appointed by the attorney general, only one of whom may be directly involved in the manufacture, distribution, sale, or service of any motor vehicle. Board members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated pursuant to RCW 43.03.240~~) program and conduct arbitrations under the procedures and standards established in this chapter.

**NEW SECTION. Sec. 10.** This act is remedial in nature and applies retroactively to the effective date of this act.

**NEW SECTION. Sec. 11.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

On page 1, line 1 of the title, after "provisions;" strike the remainder of the title and insert "amending RCW 19.118.021, 19.118.031, 19.118.041, 19.118.061, 19.118.080, 19.118.090, 19.118.095, 19.118.120, and 19.118.160; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1215 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1215, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1215, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1215, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 8, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1225 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"Sec. 1.** RCW 82.38.080 and 2008 c 237 s 1 are each amended to read as follows:

(1) There is exempted from the tax imposed by this chapter, the use of fuel for:

(a) Street and highway construction and maintenance purposes in motor vehicles owned and operated by the state of Washington, or any county or municipality;

(b) Publicly owned firefighting equipment;

(c) Special mobile equipment as defined in RCW 46.04.552;

(d) Power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or which is established by any of the following formulae:

(i) Pumping propane, or fuel or heating oils or milk picked up from a farm or dairy farm storage tank by a power take-off unit on a delivery truck, at a rate determined by the department: PROVIDED, That claimant when presenting his or her claim to the department in accordance with this chapter, shall provide to the claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his or her claim;

(ii) Operating a power take-off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty-five percent of the total gallons of fuel used in such a truck; or

(iii) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter;

(e) Motor vehicles owned and operated by the United States government;

(f) Heating purposes;

(g) Moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle;

(h) Transportation services for persons with special transportation needs by a private, nonprofit transportation provider regulated under chapter 81.66 RCW;

(i) Vehicle refrigeration units, mixing units, or other equipment powered by separate motors from separate fuel tanks;

(j) The operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway; and

(k) Waste vegetable oil as defined under RCW 82.08.0205 if the oil is used to manufacture biodiesel.

(2) There is exempted from the tax imposed by this chapter the removal or entry of special fuel under the following circumstances and conditions:

(a) If it is the removal from a terminal or refinery of, or the entry or sale of, a special fuel if all of the following apply:

(i) The person otherwise liable for the tax is a licensee other than a dyed special fuel user or international fuel tax agreement licensee;

(ii) For a removal from a terminal, the terminal is a licensed terminal; and

(iii) The special fuel satisfies the dyeing and marking requirements of this chapter;

(b) If it is an entry or removal from a terminal or refinery of taxable special fuel transferred to a refinery or terminal and the persons involved, including the terminal operator, are licensed; and

(c)(i) If it is a special fuel that, under contract of sale, is shipped to a point outside this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier;

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point;

(C) Delivery by the supplier to a vessel clearing from port of this state for a port outside this state and actually exported from this state in the vessel.

(ii) For purposes of this subsection (2)(c):

(A) "Carrier" means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers; and

(B) "Forwarding agent" means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

(3)(a) Notwithstanding any provision of law to the contrary, every privately owned urban passenger transportation system and carriers as defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel taxes. For the purposes of this section "privately owned urban passenger transportation system" means every privately owned transportation system(~~(, publicly or privately owned,)~~) having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles (~~(and/or)~~) or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles (~~(and/or)~~) or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles (~~(and/or)~~) or trackless trolleys subject to routing by the same transportation system, shall not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles are located: PROVIDED, That no refunds or credits shall be granted on special fuel used by any privately owned urban transportation vehicle, or vehicle operated pursuant to chapters 81.68 and 81.70 RCW, on any trip where any portion of (~~(said)~~) the trip is more than twenty-five road miles beyond the corporate limits of the county in which (~~(said)~~) the trip originated.

(b) Every publicly owned and operated urban passenger transportation system is exempt from the provisions of this chapter that require the payment of special fuel taxes. For the purposes of this subsection, "publicly owned and operated urban passenger transportation systems" include public transportation benefit areas under chapter 36.57A RCW, metropolitan municipal corporations under chapter 36.56 RCW, city-owned transit systems under chapter 35.58 RCW, county public transportation authorities under chapter 36.57 RCW, unincorporated transportation benefit areas under chapter 36.57 RCW, and regional transit authorities under chapter 81.112 RCW."

On page 1, line 2 of the title, after "systems;" strike the remainder of the title and insert "and amending RCW 82.38.080."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1225 and advanced the bill as amended by the Senate to final passage.

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

Representatives Liias and Roach spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1225, as amended by the Senate.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute House Bill No. 1225, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 66; Nays, 31; Absent, 0; Excused, 1.

Voting yea: Representatives Angel, Appleton, Bailey, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Finn, Goodman, Grant-Herriot, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Kirby, Liias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Quall, Roberts, Rodne, Rolfes, Santos, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Armstrong, Chandler, Condotta, Cox, Crouse, Dammeier, DeBolt, Driscoll, Ericksen, Haler, Herrera, Hinkle, Hope, Johnson, Klippert, Kretz, Kristiansen, McCune, Orcutt, Parker, Pearson, Probst, Roach, Ross, Schmick, Shea, Short, Taylor and Warnick.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1225, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

April 2, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1295 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature recognizes that agricultural fairs serve valuable educational, vocational, and recreational purposes that promote the public good and serve as showcases for an important sector of Washington's economy. The legislature also recognizes that counties provide territory for agricultural fairs and supporting services, thereby creating locales for economic and other beneficial activities. Washington's increasing population can, however, create significant annexation pressures that impact fairgrounds and surrounding lands.

In recognition of the many benefits of agricultural fairs and the importance of promoting effective annexation laws, the legislature intends to establish clear and logical procedures for the annexation

of county-owned fairgrounds that are consistent with the longstanding requirement that these grounds may only be annexed with the consent of a majority of the county legislative authority.

**Sec. 2.** RCW 35.13.010 and 1965 c 7 s 35.13.010 are each amended to read as follows:

Any portion of a county not incorporated as part of a city or town but lying contiguous thereto may become a part of the city or town by annexation(~~(: PROVIDED, That property owned by a county, and used for the purpose of an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW shall not be subject to annexation without the consent of the majority of the board of county commissioners)~~). An area proposed to be annexed to a city or town shall be deemed contiguous thereto even though separated by water or tide or shore lands on which no bona fide residence is maintained by any person.

**NEW SECTION. Sec. 3.** A new section is added to chapter 35.13 RCW to read as follows:

(1) Territory owned by a county and used for an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW may only be annexed to a city or town through the method prescribed in this section.

(a) The legislative body of the city or town proposing the annexation must submit a request for annexation and a legal description of the subject territory to the legislative authority of the county within which the territory is located.

(b) Upon receipt of the request and description, the county legislative authority has thirty days to review the proposal and determine if the annexation proceedings will continue. As a condition of approval, the county legislative authority may modify the proposal, but it may not add territory that was not included in the request and description. Approval of the county legislative authority is a condition precedent to further proceedings upon the request and there is no appeal of the county legislative authority's decision.

(c) If the county legislative authority determines that the proceedings may continue, it must, within thirty days of the determination, fix a date for a public hearing on the proposal, and cause notice of the hearing to be published at least once a week for two weeks prior to the hearing in one or more newspapers of general circulation in the territory proposed for annexation. The notice must also be posted in three public places within the subject territory, specify the time and place of the hearing, and invite interested persons to appear and voice approval or disapproval of the annexation. If the annexation proposal provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice must include a statement of these requirements.

(d) If, following the conclusion of the hearing, a majority of the county legislative authority deems the annexation proposal to be in the best interest of the county, it may adopt a resolution approving of the annexation.

(e) If, following the county legislative authority's adoption of the annexation approval resolution, the legislative body of the city or town proposing annexation determines to effect the annexation, it must do so by ordinance. The ordinance: (i) May only include territory approved for annexation in the resolution adopted under (d) of this subsection; and (ii) must not exclude territory approved for annexation in the resolution adopted under (d) of this subsection. Upon passage of the annexation ordinance, a certified copy must be filed with the applicable county legislative authority.

(2) Any territory annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance.

**Sec. 4.** RCW 35A.14.010 and 1967 ex.s. c 119 s 35A.14.010 are each amended to read as follows:

Any portion of a county not incorporated as part of a city or town but lying contiguous to a code city may become a part of the charter code city or noncharter code city by annexation(~~(: PROVIDED, That property owned by a county, and used for the purpose of an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW shall not be subject to annexation without the consent of the majority of the board of county commissioners)~~). An area proposed to be annexed to a charter code city or noncharter code city shall be deemed contiguous thereto even though separated by water or tide or shore lands and, upon annexation of such area, any such intervening water and/or tide or shore lands shall become a part of such annexing city.

**NEW SECTION. Sec. 5.** A new section is added to chapter 35A.14 RCW to read as follows:

(1) Territory owned by a county and used for an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW may only be annexed to a code city through the method prescribed in this section.

(a) The legislative body of the city proposing the annexation must submit a request for annexation and a legal description of the subject territory to the legislative authority of the county within which the territory is located.

(b) Upon receipt of the request and description, the county legislative authority has thirty days to review the proposal and determine if the annexation proceedings will continue. As a condition of approval, the county legislative authority may modify the proposal, but it may not add territory that was not included in the request and description. Approval of the county legislative authority is a condition precedent to further proceedings upon the request and there is no appeal of the county legislative authority's decision.

(c) If the county legislative authority determines that the proceedings may continue, it must, within thirty days of the determination, fix a date for a public hearing on the proposal, and cause notice of the hearing to be published at least once a week for two weeks prior to the hearing in one or more newspapers of general circulation in the territory proposed for annexation. The notice must also be posted in three public places within the subject territory, specify the time and place of the hearing, and invite interested persons to appear and voice approval or disapproval of the annexation. If the annexation proposal provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice must include a statement of these requirements.

(d) If, following the conclusion of the hearing, a majority of the county legislative authority deems the annexation proposal to be in the best interest of the county, it may adopt a resolution approving of the annexation.

(e) If, following the county legislative authority's adoption of the annexation approval resolution, the legislative body of the city proposing annexation determines to effect the annexation, it must do so by ordinance. The ordinance: (i) May only include territory approved for annexation in the resolution adopted under (d) of this subsection; and (ii) must not exclude territory approved for annexation in the resolution adopted under (d) of this subsection. Upon passage of the annexation ordinance, a certified copy must be filed with the applicable county legislative authority.

(2) Any territory annexed through an ordinance adopted under this section is annexed and becomes a part of the code city upon the date fixed in the ordinance."

On page 1, line 1 of the title, after "fairs;" strike the remainder of the title and insert "amending RCW 35.13.010 and 35A.14.010;

adding a new section to chapter 35.13 RCW; adding a new section to chapter 35A.14 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1295 and advanced the bill as amended by the Senate to final passage.

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

Representative Warnick spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1295, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1295, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 1295, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 13, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1309 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.29.056 and 2007 c 270 s 1 are each amended to read as follows:

(1)(a) Subject to RCW 18.29.230 and ~~((e))~~ (e) of this subsection, dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may be employed ~~((or))~~ retained, or contracted by health care facilities and senior centers to perform authorized

dental hygiene operations and services without dental supervision(~~g~~);

(b) Subject to RCW 18.29.230 and (e) of this subsection, dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may perform authorized dental hygiene operations and services without dental supervision under a lease agreement with a health care facility or senior center.

(c) Dental hygienists performing operations and services under (a) or (b) of this subsection are limited to removal of deposits and stains from the surfaces of the teeth, application of topical preventive or prophylactic agents, polishing and smoothing restorations, and performance of root planing and soft-tissue curettage, but shall not perform injections of anesthetic agents, administration of nitrous oxide, or diagnosis for dental treatment.

~~((b))~~ (d) The performance of dental hygiene operations and services in health care facilities shall be limited to patients, students, and residents of the facilities.

~~((c))~~ (e) A dental hygienist employed (~~(or)~~) retained, or contracted to perform services under this section or otherwise performing services under a lease agreement under this section in a senior center must, before providing services:

(i) Enter into a written practice arrangement plan, approved by the department, with a dentist licensed in this state, under which the dentist will provide off-site supervision of the dental services provided. This agreement does not create an obligation for the dentist to accept referrals of patients receiving services under the program;

(ii) Collect data on the patients treated by dental hygienists under the program, including age, treatments rendered, insurance coverage, if any, and patient referral to dentists. This data must be submitted to the department of health at the end of each annual quarter, ~~((commencing))~~ during the period of time between October 1, 2007, and October 1, 2013; and

(iii) Obtain information from the patient's primary health care provider about any health conditions of the patient that would be relevant to the provision of preventive dental care. The information may be obtained by the dental hygienist's direct contact with the provider or through a written document from the provider that the patient presents to the dental hygienist.

~~((d))~~ (f) For dental planning and dental treatment, dental hygienists shall refer patients to licensed dentists.

(2) For the purposes of this section:

(a) "Health care facilities" are limited to hospitals; nursing homes; home health agencies; group homes serving the elderly, individuals with disabilities, and juveniles; state-operated institutions under the jurisdiction of the department of social and health services or the department of corrections; and federal, state, and local public health facilities, state or federally funded community and migrant health centers, and tribal clinics. ~~((Until July 1, 2009, "health care facilities" also include senior centers.))~~

(b) "Senior center" means a multipurpose community facility operated and maintained by a nonprofit organization or local government for the organization and provision of a ~~((broad spectrum of))~~ combination of some of the following: Health, social, nutritional, ~~((and))~~ educational services, and recreational activities for persons sixty years of age or older.

**Sec. 2.** RCW 18.29.220 and 2007 c 270 s 2 are each amended to read as follows:

For low-income, rural, and other at-risk populations and in coordination with local public health jurisdictions and local oral health coalitions, a dental hygienist licensed in this state may assess for and apply sealants and apply fluoride varnishes, and may remove

deposits and stains from the surfaces of teeth ~~((until July 1, 2009,))~~ in community-based sealant programs carried out in schools:

(1) Without attending the department's school sealant endorsement program if the dental hygienist was licensed as of April 19, 2001; or

(2) If the dental hygienist is school sealant endorsed under RCW 43.70.650.

A hygienist providing services under this section must collect data on patients treated, including age, treatment rendered, methods of reimbursement for treatment, evidence of coordination with local public health jurisdictions and local oral health coalitions, and patient referrals to dentists. ~~((These [This]))~~ This data must be submitted to the department of health at the end of each annual quarter, ~~((commencing))~~ during the period of time between October 1, 2007, and October 1, 2013.

**NEW SECTION. Sec. 3.** The secretary of health, in consultation with representatives of dental hygienists and dentists, shall provide a report to the appropriate committees of the legislature by December 1, 2013, that provides a summary of the information about patients receiving dental hygiene services in senior centers that is collected under RCW 18.29.056(1)(e)(ii), and in community-based sealant programs carried out in schools under RCW 18.29.220. This report must also include the following:

(1) For patients receiving scaling and root planning in senior center practices, an evaluation of the patient's need for pain control;

(2) For community-based sealant programs in schools, the number of sealants applied; the teeth cleaning method selected for the patient; whether the patient was reevaluated at a recall appointment; and the need for reapplication of the sealant at the recall appointment; and

(3) For patients receiving treatment in either the senior center practices or the community-based sealant programs in schools, the number of referred patients that are seen by a dentist; the lessons learned from these practices; and any unintended consequences or outcomes.

**NEW SECTION. Sec. 4.** 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 July 1, 2009."

On page 1, line 1 of the title, after "hygiene;" strike the remainder of the title and insert "amending RCW 18.29.056 and 18.29.220; creating a new section; providing an effective date; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1309 and advanced the bill as amended by the Senate to final passage.

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1309, as amended by the Senate.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute House Bill No. 1309, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1309, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 14, 2009

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 1326 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 77.70 RCW to read as follows:

The definitions in this section apply throughout this chapter and related rules adopted by the department unless the context clearly requires otherwise.

(1) "Deliver" or "delivery" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters.

(2) "Pacific sardine" and "pilchard" means the species *Sardinops sagax*.

**NEW SECTION. Sec. 2.** A new section is added to chapter 77.70 RCW to read as follows:

(1) A Washington sardine purse seine fishery license or temporary annual fishery permit is required to use purse seine gear to fish for or possess Pacific sardines in offshore waters. This requirement does not affect persons authorized to fish for or possess sardines in offshore waters under a valid Oregon or California license or permit.

(2) A Washington sardine purse seine fishery license or temporary annual fishery permit is required to deliver Pacific sardines into the state.

(3) Washington sardine purse seine fishery licenses and temporary annual fishery permits require vessel designation under RCW 77.65.100.

(4) Pacific sardines may not be taken or retained in state waters except for incidental harvest authorized by rule of the department.

**NEW SECTION. Sec. 3.** A new section is added to chapter 77.70 RCW to read as follows:

(1) A Washington Pacific sardine purse seine fishery license:

(a) May only be issued to a person that held a coastal pilchard experimental fishery permit in 2008, except as otherwise provided in this section;

(b) Must be renewed annually to remain active; and

(c) Subject to the restrictions of subsections (6) and (7) of this section and RCW 77.65.040, is transferable.

(2) A Washington Pacific sardine purse seine fishery license may be issued to any person that held a coastal pilchard experimental fishery permit in 2005, 2006, or 2007 and is precluded from qualifying under subsection (1) of this section because the vessel designated on the permit sank prior to 2008.

(3) Beginning in 2010, after taking into consideration the status of the Pacific sardine population, the impact of removal of sardines and other forage fish to the marine ecosystem, including the effect on endangered marine species, and the market for Pacific sardines in the state, the director may issue:

(a) A Washington Pacific sardine purse seine fishery license to any person provided that the issuance would not raise the number of licenses beyond the number initially issued in 2009;

(b) A Washington Pacific sardine purse seine temporary annual fishery permit to any person if the combined number of active Washington Pacific sardine purse seine fishery licenses and annual temporary permits already issued during the year is less than twenty-five.

(4) The annual fee for a Washington Pacific sardine purse seine fishery license is one hundred eighty-five dollars for residents and two hundred ninety-five dollars for nonresidents.

(5) The fee for a Washington Pacific sardine purse seine temporary annual fishery permit is one hundred eighty-five dollars for residents and two hundred ninety-five dollars for nonresidents. A temporary annual fishery permit expires at the end of the calendar year in which the permit is issued.

(6) Only a person who owns or operates the vessel designated on the license or permit may hold a Washington Pacific sardine purse seine fishery license or temporary annual fishery permit.

(7) A person may not own or hold an ownership interest in more than two Washington Pacific sardine purse seine fishery licenses.

(8) The director shall adopt rules that require a person fishing under a Washington Pacific sardine purse seine fishery license or a temporary annual permit to minimize by-catch, and to the extent by-catch cannot be avoided, to minimize the mortality of such by-catch.

**Sec. 4.** RCW 77.65.200 and 2000 c 107 s 41 are each amended to read as follows:

(1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

*Format change to accommodate text.*





Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Baitfish Lampara	\$185	\$295	Yes	No
(b) Baitfish purse seine	\$530	\$985	Yes	No
(c) Bottom fish jig	\$130	\$185	Yes	No
(d) Bottom fish pot	\$130	\$185	Yes	No
(e) Bottom fish troll	\$130	\$185	Yes	No
(f) Carp	\$130	\$185	No	No
(g) Columbia river smelt	\$380	\$685	No	No
(h) Dog fish set net	\$130	\$185	Yes	No
(i) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	\$185	\$295	Determined by rule	Determined by rule
(j) Food fish drag seine	\$130	\$185	Yes	No
(k) Food fish set line	\$130	\$185	Yes	No
(l) Food fish trawl-Non-Puget Sound	\$240	\$405	Yes	No
(m) Food fish trawl-Puget Sound	\$185	\$295	Yes	No
(n) Herring dip bag net (RCW 77.70.120)	\$175	\$275	Yes	Yes
(o) Herring drag seine (RCW 77.70.120)	\$175	\$275	Yes	Yes
(p) Herring gill net (RCW 77.70.120)	\$175	\$275	Yes	Yes
(q) Herring Lampara (RCW 77.70.120)	\$175	\$275	Yes	Yes
(r) Herring purse seine (RCW 77.70.120)	\$175	\$275	Yes	Yes
(s) Herring spawn-on-kelp (RCW 77.70.210)	N/A	N/A	Yes	Yes
(t) <u>Sardine purse seine (section 2 of this act)</u>	<u>\$185</u>	<u>\$295</u>	<u>Yes</u>	<u>Yes</u>
(u) <u>Sardine purse seine temporary (section 2 of this act)</u>	<u>\$185</u>	<u>\$295</u>	<u>Yes</u>	<u>No</u>
(v) Smelt dip bag net	\$130	\$185	No	No
<del>((t))</del> (w) Smelt gill net	\$380	\$685	Yes	No
<del>((t))</del> (x) Whiting-Puget Sound (RCW 77.70.130)	\$295	\$520	Yes	Yes

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery."

On page 1, line 3 of the title, after "state;" strike the remainder of the title and insert "amending RCW 77.65.200; and adding new sections to chapter 77.70 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1326 and advanced the bill as amended by the Senate to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Blake spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 1326, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 1326, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1326, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

April 8, 2009

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 1362 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.88.140 and 2007 c 368 s 8 are each amended to read as follows:

(1)(a) Upon an arrest for a suspected violation of patronizing a prostitute ~~((or)), promoting prostitution in the first degree, promoting prostitution in the second degree, promoting travel for prostitution, commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor,~~ the arresting law enforcement officer may impound the person's vehicle if ~~((or))~~ (i) the motor vehicle was used in the commission of the crime; ~~((or))~~ (ii) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465; and ~~((or))~~ (iii) either (A) the person arrested has previously been convicted of ~~((patronizing a prostitute, under RCW 9A.88.110, or commercial sexual abuse of a minor, under RCW 9.68A.100))~~ one of the offenses listed in this subsection or (B) the offense was committed within an area designated under (b) of this subsection.

(b) A local governing authority may designate areas within which vehicles are subject to impoundment under this section regardless of whether the person arrested has previously been convicted of any of the offenses listed in (a) of this subsection.

(i) The designation must be based on evidence indicating that the area has a disproportionately higher number of arrests for the offenses listed in (a) of this subsection as compared to other areas within the same jurisdiction.

(ii) The local governing authority shall post signs at the boundaries of the designated area to indicate that the area has been designated under this subsection.

(2) Impoundments performed under this section shall be in accordance with chapter 46.55 RCW and the impoundment order must clearly state "prostitution hold."

(3)(a) Prior to redeeming the impounded vehicle, and in addition to all applicable impoundment, towing, and storage fees paid to the towing company under chapter 46.55 RCW, the owner of the impounded vehicle must pay a fine of five hundred dollars to the impounding agency. The fine shall be deposited in the prostitution prevention and intervention account established under RCW 43.63A.740.

(b) Upon receipt of the fine paid under (a) of this subsection, the impounding agency shall issue a written receipt to the owner of the impounded vehicle.

(4)(a) In order to redeem a vehicle impounded under this section, the owner must provide the towing company with the written receipt issued under subsection (3)(b) of this section.

(b) The written receipt issued under subsection (3)(b) of this section authorizes the towing company to release the impounded vehicle upon payment of all impoundment, towing, and storage fees.

(c) A towing company that relies on a forged receipt to release a vehicle impounded under this section is not liable to the impounding authority for any unpaid fine under subsection (3)(a) of this section.

(5)(a) In any proceeding under chapter 46.55 RCW to contest the validity of an impoundment under this section where the claimant substantially prevails, the claimant is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the five hundred dollar fine paid under subsection (3) of this section.

(b) If the person is found not guilty at trial for a crime listed under subsection (1) of this section, the person is entitled to a full

refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the five hundred dollar fine paid under subsection (3) of this section.

(c) All refunds made under this section shall be paid by the impounding agency.

(d) Prior to receiving any refund under this section, the claimant must provide proof of payment.

**Sec. 2.** RCW 43.63A.740 and 1995 c 353 s 11 are each amended to read as follows:

The prostitution prevention and intervention account is created in the state treasury. All designated receipts from fees under RCW 9.68A.105 and 9A.88.120 and fines collected under RCW 9A.88.140 shall be deposited into the account. Expenditures from the account may be used only for funding the grant program to enhance prostitution prevention and intervention services under RCW 43.63A.720.

**Sec. 3.** RCW 46.55.120 and 2004 c 250 s 1 are each amended to read as follows:

(1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency ~~(may)~~ shall issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (a)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty

days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(b) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(c) Notwithstanding (b) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(d) Notwithstanding (b) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(e) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (b) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing

request, the court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO: . . . . .  
 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the . . . . . Court located at . . . . . in the sum of \$. . . . ., in an action entitled . . . . ., Case No. . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . .

if the judgment is not paid within 15 days of the date of this notice.

DATED this . . . . day of . . . . ., (year) . . .

Signature . . . . .

Typed name and address  
of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees."

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "vehicles used in prostitution-related offenses; and amending RCW 9A.88.140, 43.63A.740, and 46.55.120."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1362 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 1362, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 1362, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1362, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

March 31, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1433 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 46.44.110 and 1984 c 7 s 59 are each amended to read as follows:

Any person operating any vehicle or moving any object or conveyance upon any public highway in this state or upon any bridge or elevated structure that is a part of any such public highway is liable for all damages that the public highway, bridge, ~~((or))~~ elevated structure, or other state property may sustain as a result of any illegal operation of the vehicle or the moving of any such object or conveyance or as a result of the operation or moving of any vehicle, object, or conveyance weighing in excess of the legal weight limits allowed by law. This section applies to any person operating any vehicle or moving any object or contrivance in any illegal or negligent manner or without a special permit as provided by law for vehicles, objects, or contrivances that are overweight, overwidth, overheight, or overlength. Any person operating any vehicle is liable for any damage to any public highway, bridge, ~~((or))~~ elevated structure, or other state property sustained as the result of any negligent operation thereof. When the operator is not the owner of the vehicle, object, or contrivance but is operating or moving it with the express or implied permission of the owner, the owner and the operator are jointly and severally liable for any such damage. Such damage to any state highway ~~((or))~~, structure, or other state property may be recovered in a civil action instituted in the name of the state of Washington by the department of transportation or other affected state agency. Any measure of damage ~~((to any public highway))~~ determined by the department of transportation ~~((by reason of))~~ to its highway, bridge, elevated structure, or other property under this section is prima facie the amount of damage caused thereby and is presumed to be the amount recoverable in any civil action therefor. The damages available under this section include the incident response costs, including traffic control, incurred by the department of transportation."

On page 1, line 2 of the title, after "vehicle;" strike the remainder of the title and insert "and amending RCW 46.44.110."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1433 and advanced the bill as amended by the Senate to final passage.

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

Representative Liias spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1433, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1433, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 1433, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

April 9, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1448 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 46.61 RCW to read as follows:

(1) Tribal authorities, within their reservation boundaries, may determine based on an engineering and traffic investigation that the maximum speed permitted under RCW 46.61.400 or 46.61.405 is greater or less than is reasonable or safe under the conditions found to exist upon a nonlimited access state highway or part of a nonlimited access state highway. Then, the tribal authority may determine and declare a reasonable and safe maximum limit thereon which:

- (a) Decreases the limit at intersections;
- (b) Increases the limit, not exceeding sixty miles per hour; or
- (c) Decreases the limit, not lower than twenty miles per hour.

(2) Any alteration by tribal authorities of maximum limits on a nonlimited access state highway is not effective until the alteration has been approved by the secretary of transportation and appropriate signs giving notice of the alteration have been posted. In the case of an alteration by tribal authorities of maximum limits on a nonlimited access state highway that is also part of a city or town street or county road within tribal reservation boundaries, the alteration is not effective until that alteration has also been approved by the applicable local authority."

On page 1, line 2 of the title, after "boundaries;" strike the remainder of the title and insert "and adding a new section to chapter 46.61 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1448 and advanced the bill as amended by the Senate to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Hurst spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1448, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1448, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 95; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Chandler and Taylor.

Excused: Representative Flannigan.

HOUSE BILL NO. 1448, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

April 14, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1529 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 74.09 RCW to read as follows:

(1) The home health program shall require registered nurse oversight and intervention, as appropriate. In-person contact between a home health care registered nurse and a patient is not required under the state's medical assistance program for home health services that are: (a) Delivered with the assistance of telemedicine and (b) otherwise eligible for reimbursement as a medically necessary skilled home health nursing visit under the program.

(2) The department in consultation with home health care service providers shall develop reimbursement rules and, in rule, define the requirements that must be met for a reimbursable skilled nursing visit when services are rendered without a face-to-face visit and are assisted by telemedicine.

(3)(a) The department shall establish the reimbursement rate for skilled home health nursing services delivered with the assistance of telemedicine that meet the requirements of a reimbursable visit as defined by the department.

(b) Reimbursement is not provided for purchase or lease of telemedicine equipment.

(4) Any home health agency licensed under chapter 70.127 RCW and eligible for reimbursement under the medical programs authorized under this chapter may be reimbursed for services under this section if the service meets the requirements for a reimbursable skilled nursing visit as defined by the department.

(5) Nothing in this section shall be construed to alter the scope of practice of any home health care services provider or authorizes the delivery of home health care services in a setting or manner not otherwise authorized by law.

(6) The use of telemedicine is not intended to replace registered nurse health care visit when necessary.

(7) For the purposes of this section, "telemedicine" means the use of telemonitoring to enhance the delivery of certain home health medical services through:

(a) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit; or

(b) The collection of clinical data and the transmission of such data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry."

On page 1, line 2 of the title, after "telemedicine;" strike the remainder of the title and insert "and adding a new section to chapter 74.09 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1529 and advanced the bill as amended by the Senate to final passage.

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

Representative Seaquist spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1529, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1529, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1529, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 8, 2009

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 1530 with the following amendment:

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** (1) The purpose of this chapter is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(2) This chapter does not apply to:

(a) An insurance policy offered by an insurer under this title; or  
(b) A federally regulated financial institution operating under 12

C.F.R. Part 37 of the office of the comptroller of the currency regulations or credit unions operating under 12 C.F.R. 721.3(g) of the national credit union administration regulations, or state regulated banks, credit unions, financial institutions operating pursuant to chapter 63.14 RCW, and consumer loan companies operating pursuant to chapter 31.04 RCW. However, an exempt federal or state chartered bank, credit union, or financial institution may elect to offer a guaranteed asset protection waiver that complies with sections 1, 2, and 4 through 7 of this act.

(3) Guaranteed asset protection waivers are governed under this chapter and are exempt from all other provisions of this title, except RCW 48.02.060 and 48.02.080, chapter 48.04 RCW, and as provided in this chapter.

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

(1) "Administrator" means a person, other than an insurer or creditor that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

(2) "Borrower" means a debtor, retail buyer, or lessee, under a finance agreement, or a person who receives a loan or enters into a retail installment contract to purchase or lease a motor vehicle or vessel under chapter 63.14 RCW.

(3) "Creditor" means:

(a) The lender in a loan or credit transaction;

(b) The lessor in a lease transaction;



(c) Any retail seller of motor vehicles that provides credit to retail buyers of motor vehicles provided the seller complies with this chapter;

(d) The seller in commercial retail installment transactions; or

(e) The assignees of any creditor under this subsection to whom the credit obligation is payable.

(4) "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.

(5) "Free look period" means the period of time from the effective date of the waiver until the date the borrower may cancel the waiver without penalty, fees, or costs to the borrower. This period of time must not be shorter than thirty days.

(6) "Guaranteed asset protection waiver" or "waiver" means a contractual agreement wherein a creditor agrees for a separate charge to cancel or waive all or part of amounts due that creditor on a borrower's finance agreement with that creditor in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.

(7) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(8) "Motor vehicle" means self-propelled or towed vehicles designed for personal or commercial use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and motorcycle, boat, camper, and personal watercraft trailers.

(9) "Motor vehicle dealer" has the same meaning as "vehicle dealer" in RCW 46.70.011.

(10) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

(11) "Retail buyer" means a person who buys or agrees to buy a motor vehicle or obtain motor vehicle services or agrees to have motor vehicle services rendered or furnished from a retail seller.

(12) "Retail seller" means a person engaged in the business of selling motor vehicles or motor vehicle services to retail buyers.

(13) "Unregistered marketers" means persons who offer for sale and sell guaranteed asset protection waivers who are not registered under this chapter and who are not otherwise exempt under this chapter.

**NEW SECTION. Sec. 3.** (1) This chapter applies only to guaranteed asset protection waivers for financing of motor vehicles as defined in this chapter. Any person or entity must register with the commissioner before marketing, offering for sale or selling a guaranteed asset protection waiver, and before acting as an obligor for a guaranteed asset protection waiver, in this state. However, a retail seller of motor vehicles that assigns more than eighty-five percent of guaranteed asset protection waiver agreements within thirty days of such agreements' effective date, or an insurer authorized to transact such insurance business in this state, are not required to register pursuant to this section. Failure of any retail seller of motor vehicles to assign one hundred percent of guaranteed asset protection waiver agreements within forty-five days of such agreements' effective date will result in that retail seller being required to comply with the registration requirements of this chapter.

(2) No person may market, offer for sale, or sell a guaranteed asset protection waiver, or act as an obligor on a guaranteed asset protection waiver in this state without a registration as provided in this chapter, except as set forth in subsection (1) of this section.

(3) The application for registration must include the following:

(a) The applicant's name, address, and telephone number;

(b) The identities of the applicant's executive officers or other officers directly responsible for the waiver business;

(c) An application fee of two hundred fifty dollars, which shall be deposited into the guaranteed asset protection waiver account;

(d) A copy filed by the applicant with the commissioner of the waivers the applicant intends to offer in this state;

(e) A list of all unregistered marketers of guaranteed asset protection waivers on which the applicant will be the obligor;

(f) Such additional information as the commissioner may reasonably require.

(4) Once registered, the applicant shall keep the information required for registration current by reporting changes within thirty days after the end of the month in which the change occurs.

**NEW SECTION. Sec. 4.** (1) Waivers may be offered, sold, or provided to borrowers in this state in compliance with this chapter.

(2) Waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the truth in lending act (15 U.S.C. Sec. 1601 et seq.) and its implementing regulations, as amended, must be separately stated and is not to be considered a finance charge or interest.

(4) Nothing in this chapter prohibits a person who is registered, or is otherwise exempt from registration or exempt from this chapter, from insuring its waiver obligation through the purchase of a contractual liability policy or other insurance policy issued by an insurer authorized to transact such insurance in this state.

(5) The waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(6) Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a waiver.

(7) Any creditor that offers a waiver must report the sale of, and forward funds received on, all waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, under the terms of a written agreement, must be held by that creditor or administrator in a fiduciary capacity.

(9) If the guaranteed asset protection waiver is assigned, the name and address of the assignee must be mailed to the borrower within thirty days of the assignment. If at any time the name and address provided to the borrower by the initial creditor are no longer the valid point of contact to apply for waiver benefits, written notice will be mailed to the borrower within thirty days of the change stating the new name and address of the person or entity the borrower should contact to apply for waiver benefits. No waiver may be assigned to an entity that is not registered pursuant to this chapter, unless such entity is exempt from registration or unless the commissioner specifically authorizes such assignment.

(10) No person shall knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of, or relative to, waiver business. Nor shall any person make, issue, or circulate, or cause to be made, issued, or circulated any misrepresentation of the terms or benefits of any waiver.

(11) A person or entity engaged in the guaranteed asset protection waiver business in this state may not refuse to sell or issue any guaranteed asset protection waiver because of the sex, marital status, or sexual orientation as defined in RCW 49.60.040, or the

presence of any sensory, mental, or physical disability of the borrower or prospective borrower. The type of benefits, or any term, rate, condition, or type of coverage may not be restricted, modified, excluded, increased, or reduced on the basis of the presence of any sensory, mental, or physical disability of the borrower or prospective borrower.

**NEW SECTION. Sec. 5.** (1) Contractual liability or other insurance policies insuring waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the waivers issued by the creditor and purchased or held by the borrower. Contractual liability insurance or other insurance policies insuring waivers must not be purchased by the creditor as part of, or a rider to, vendor single-interest or collateral protection coverages as defined in RCW 48.22.110(4).

(2) Coverage under a contractual liability or other insurance policy insuring a waiver must also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(3) Coverage under a contractual liability or other insurance policy insuring a waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual liability or other insurance policy must not reduce the insurer's responsibility for waivers issued by the creditor prior to the date of cancellation or termination and for which a premium has been received by the insurer.

**NEW SECTION. Sec. 6.** Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

(1) The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor;

(2) The purchase price and the terms of the waiver, including without limitation, the requirements for protection, conditions, or exclusions associated with the waiver;

(3) That the borrower may cancel the waiver within a free look period as specified in the waiver, and will be entitled to a full refund of the purchase price, so long as no benefits have been provided; or in the event benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the waiver;

(4) The procedure the borrower must follow, if any, to obtain waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits;

(5) Whether or not the waiver is cancellable after the free look period and the conditions under which it may be canceled or terminated including the procedures for requesting any refund due;

(6) That in order to receive any refund due in the event of a borrower's cancellation of the waiver agreement or early termination of the finance agreement after the free look period of the waiver, the borrower, in accordance with terms of the waiver, must provide a written request to cancel to the creditor, administrator, or such other party, within ninety days of the occurrence of the event terminating the finance agreement;

(7) The methodology for calculating any refund of the unearned purchase price of the waiver due, in the event of cancellation of the waiver or early termination of the finance agreement;

(8) That any refund of the purchase price for a waiver that was included in the financing of the motor vehicle or vessel may be applied by the creditor as a reduction of the overall amount owed under the finance agreement, rather than applying the refund strictly

to the purchase price of the waiver. This disclosure must be conspicuously presented prior to the purchase of the waiver;

(9) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the waiver;

(10) That the guaranteed asset protection waiver is not credit insurance, nor does it eliminate the borrower's obligation to insure the motor vehicle as provided by laws of this state. Purchasing a guaranteed asset protection waiver does not eliminate the borrower's rights and obligations under the vendor single-interest and collateral protection coverage laws of this state.

**NEW SECTION. Sec. 7.** (1) Guaranteed asset protection waiver agreements may be cancellable or noncancellable after the free look period. Waivers must provide that if a borrower cancels a waiver within the free look period, the borrower will be entitled to a full refund of the purchase price, so long as no benefits have been provided; or in the event benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the waiver.

(2) In the event of a borrower's cancellation of the waiver or early termination of the finance agreement, after the agreement has been in effect beyond the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, must provide a written request to the creditor, administrator, or other party, within ninety days of the event terminating the finance agreement.

(3) If the cancellation of a waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection (4) of this section.

(4) Any cancellation refund under this section may be applied by the creditor as a reduction of the overall amount owed under the finance agreement, if the cost of the guaranteed asset protection waiver was included in the financing of the motor vehicle or vessel.

(5) Disclosure of how the refund may be applied by the creditor or administrator must be made in accordance with the provisions of section 6(8) of this act.

**NEW SECTION. Sec. 8.** (1) The commissioner may, subject to chapter 48.04 RCW, take action that is necessary or appropriate to enforce this chapter and to protect guaranteed asset protection waiver holders in this state, which includes:

(a) Suspending, revoking, or refusing to issue the registration of a person or entity if the registrant fails to comply with any provision of this chapter or fails to comply with any proper order or rule of the commissioner; and

(b) After hearing or with the consent of the registrant, and in addition to or in lieu of the suspension, revocation, or refusal to issue any registration, imposing a penalty of not more than two thousand dollars for each violation of this chapter.

(2) The commissioner may adopt rules to implement this chapter.

**NEW SECTION. Sec. 9.** (1) Any person who markets, offers for sale or sells a guaranteed asset protection waiver, or acts as an obligor for a guaranteed asset protection waiver without a registration, unless otherwise exempt from registration or exempt from this chapter, is acting in violation of this section and is subject to the provisions of section 8 of this act. In addition, any person who knowingly violates this section is guilty of a class B felony punishable under chapter 9A.20 RCW.

(2) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(3) If the commissioner has cause to believe that any person has violated this section, the commissioner may assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapter 48.04 RCW. Upon failure to pay this civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty.

(4) A person or entity that should have been registered at the time of the sale of a waiver who was not so registered pursuant to this chapter is personally liable for performance of the waiver. Any waiver sold by a person or entity that should have been registered at the time of the sale is voidable, except at the instance of the person or entity who sold the waiver.

**NEW SECTION. Sec. 10.** The guaranteed asset protection waiver account is created in the custody of the state treasurer. The fees and fines collected under this chapter must be deposited into the account. Expenditures from the account may be used to implement, administer, and enforce this chapter. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec. 11.** RCW 63.14.010 and 2003 c 368 s 2 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(3) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(4) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(5) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(6) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(7) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(8) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid principal balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(9) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement between a retail buyer and a retail seller that is entered into or performed in this state and that prescribes the terms of retail installment transactions with one or more sellers which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, any vehicle dealer administrative fee under RCW 46.12.042, any vehicle dealer documentary service fee under RCW 46.70.180(2), or official fees;

(12) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and license fees, the cost of a guaranteed asset protection waiver, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(13) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(14) "Time balance" means the principal balance plus the service charge;

(15) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and official fees; and the amount actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(16) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(17) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period.

**NEW SECTION. Sec. 12.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 13.** This act is applicable to all guaranteed asset protection waiver agreements entered into on or after January 1, 2010.

**NEW SECTION. Sec. 14.** Sections 1 through 10, 12, and 13 of this act constitute a new chapter in Title 48 RCW."

On page 1, line 2 of the title, after "act;" strike the remainder of the title and insert "amending RCW 63.14.010; adding a new chapter to Title 48 RCW; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 1530 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 1530, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 1530, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liiias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

ENGROSSED HOUSE BILL NO. 1530, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 9, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1552 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 34.05.325 and 2005 c 274 s 262 are each amended to read as follows:

(1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by

these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.56 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment individually. All comments by all persons shall be made in the presence and hearing of other attendees. Written or electronic submissions may be accepted and included in the record. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(i) Identifying the agency's reasons for adopting the rule;

(ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment."

On page 1, line 1 of the title, after "meetings;" strike the remainder of the title and insert "and amending RCW 34.05.325."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1552 and advanced the bill as amended by the Senate to final passage.

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1552, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1552, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler,

Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, VanDe Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1552, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 8, 2009

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 1566 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to read as follows:

(1) The commissioner (~~shall have~~) has the authority expressly conferred upon him or her by or reasonably implied from the provisions of this code.

(2) The commissioner shall execute his or her duties and shall enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules (~~and regulations~~) for effectuating any provision of this code, except those relating to his or her election, qualifications, or compensation. (~~No such~~) Rules (~~and regulations shall be~~) are not effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code.

(4) When the governor proclaims a state of emergency under RCW 43.06.010(12), the commissioner may issue an order that addresses any or all of the following matters related to insurance policies issued in this state:

(a) Reporting requirements for claims;

(b) Grace periods for payment of insurance premiums and performance of other duties by insureds;

(c) Temporary postponement of cancellations and renewals; and

(d) Medical coverage to ensure access to care.

(5) An order by the commissioner under subsection (4) of this section may remain effective for not more than sixty days unless the commissioner extends the termination date for the order for an additional period of not more than thirty days. The commissioner may extend the order if, in the commissioner's judgment, the circumstances warrant an extension. An order of the commissioner under subsection (4) of this section is not effective after the related

state of emergency is terminated by proclamation of the governor under RCW 43.06.210. The order must specify, by line of insurance:

(a) The geographic areas in which the order applies, which must be within but may be less extensive than the geographic area specified in the governor's proclamation of a state of emergency and must be specific according to an appropriate means of delineation, such as the United States postal service zip codes or other appropriate means; and

(b) The date on which the order becomes effective and the date on which the order terminates.

(6) The commissioner may adopt rules that establish general criteria for orders issued under subsection (4) of this section and may adopt emergency rules applicable to a specific proclamation of a state of emergency by the governor.

(7) The rule-making authority set forth in subsection (6) of this section does not limit or affect the rule-making authority otherwise granted to the commissioner by law."

On page 1, line 2 of the title, after "emergency;" strike the remainder of the title and insert "and amending RCW 48.02.060."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 1566 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 1566, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 1566, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

ENGROSSED HOUSE BILL NO. 1566, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

March 31, 2009

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 1580 with the following amendment:

On page 3, line 2, after "enhance" strike "instream" and insert "stream"

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 1580 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 1580, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 1580, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SECOND SUBSTITUTE HOUSE BILL NO. 1580, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 9, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1583 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"Sec. 1.** RCW 36.17.045 and 1963 c 164 s 3 are each amended to read as follows:

Employees of the counties shall have the right to voluntarily authorize the monthly deduction of their pledges to the United Good Neighbor or its successor, monthly payment to a credit ~~((tmit))~~ union as defined in RCW 31.12.005, and monthly dues to a labor union, from their salaries or wages. When such written authorization is received by the county auditor, he or she shall make such monthly deduction.

**Sec. 2.** RCW 36.17.050 and 1999 c 71 s 3 are each amended to read as follows:

~~((The auditor shall not draw his warrant for the salary of any officer until the latter shall have first filed his duplicate receipt with the auditor, properly signed by the treasurer, showing he has made the last required monthly statement and settlement.))~~ If the superior court issues a declaratory judgment under RCW 36.16.125 finding that a county officer has abandoned his or her duties, the county officer may not be paid a salary.

**Sec. 3.** RCW 36.22.010 and 1995 c 194 s 1 are each amended to read as follows:

The county auditor:

(1) Shall be recorder of deeds and other instruments in writing which by law are to be filed and recorded in and for the county for which he or she is elected;

(2) Shall keep an account current with the county treasurer, charge all money received as shown by receipts issued and credit all disbursements paid out according to the record of settlement of the treasurer with the legislative authority;

(3) Shall make out and transmit to the state auditor a ~~((complete))~~ statement of the state fund account with the county ~~((for the past fiscal year certified by his or her certificate and seal, immediately after the completion of the annual settlement of the county treasurer with the legislative authority))~~ in accordance with standards developed by the state auditor. The statement must be available to the public;

(4) Shall make available a complete exhibit of the prior-year finances of the county including, but not limited to, a statement of financial condition and financial operation in accordance with standards developed by the state auditor. This exhibit shall be made available after the financial records are closed for the prior year;

(5) Shall make out a register of all warrants legally authorized and directed to be issued by the legislative body at any regular or special meeting. The auditor shall make the data available to the county treasurer. The auditor shall retain the original of the register of warrants for future reference;

(6) As clerk of the board of county commissioners, shall:

Record all of the proceedings of the legislative authority;

Make full entries of all of their resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

Record the vote of each member on any question upon which there is a division or at the request of any member present;

Sign all orders made and warrants issued by order of the legislative authority for the payment of money;

Record the reports of the county treasurer of the receipts and disbursements of the county;

Preserve and file all accounts acted upon by the legislative authority;

Preserve and file all petitions and applications for franchises and record the action of the legislative authority thereon;

Record all orders levying taxes;

Perform all other duties required by any rule or order of the legislative authority.

**Sec. 4.** RCW 36.22.090 and 1975 c 43 s 31 are each amended to read as follows:

All warrants for the payment of claims against diking, ditch, drainage and irrigation districts and school districts of the second class, who do not issue their own warrants, as well as political subdivisions within the county for which no other provision is made by law, shall be drawn and issued by the county auditor of the county wherein such subdivision is located, upon ~~((vouchers properly approved))~~ proper approval by the governing body thereof.

**Sec. 5.** RCW 36.22.170 and 2005 c 442 s 1 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, a surcharge of five dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. One dollar of the surcharge shall be ~~((deposited in the county general fund to be))~~ used at the discretion of the county commissioners to promote historical preservation or historical programs, which may include preservation of historic documents.

(b) A surcharge of two dollars per instrument shall be charged by the county auditor for each document presented for recording by the employment security department, which will be in addition to any other charge authorized by law.

(2) Of the remaining revenue generated through the surcharges under subsection (1) of this section:

(a) Fifty percent shall be transmitted monthly to the state treasurer who shall distribute such funds to each county treasurer within the state in July of each year in accordance with the formula described in RCW 36.22.190. The county treasurer shall place the funds received in a special account titled the auditor's centennial document preservation and modernization account to be used solely for ongoing preservation of historical documents of all county offices and departments and shall not be added to the county current expense fund; and

(b) Fifty percent shall be retained by the county and deposited in the auditor's operation and maintenance fund for ongoing preservation of historical documents of all county offices and departments.

(3) The centennial document preservation and modernization account is hereby created in the custody of the state treasurer and shall be classified as a treasury trust account. State distributions from the centennial document preservation and modernization account shall be made without appropriation.

**Sec. 6.** RCW 36.40.010 and 1963 c 4 s 36.40.010 are each amended to read as follows:

On or before the second Monday in July of each year, the county auditor or chief financial officer designated in a charter county shall notify in writing each county official, elective or appointive, in charge of an office, department, service, or institution of the county, to file with him or her on or before the second Monday in August thereafter detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service, or institution for the ensuing fiscal year.

**Sec. 7.** RCW 36.40.030 and 1995 c 301 s 62 are each amended to read as follows:

The estimates required in RCW 36.40.010 and 36.40.020 shall be submitted on forms provided by the county auditor or chief financial officer designated in a charter county and classified according to the classification established by the state auditor. The county auditor or chief financial officer designated in a charter county shall provide such forms. He or she shall also prepare the estimates for interest and debt redemption requirements and any other estimates the preparation of which properly falls within the duties of his or her office.

Each such official shall file his or her estimates within the time and in the manner provided in the notice and form and the county auditor or chief financial officer ~~((shall))~~ designated in a charter county may deduct and withhold as a penalty from the salary of each official failing or refusing to file such estimates as herein provided, the sum of ~~((ten))~~ fifty dollars for each day of delay: PROVIDED, That the total penalty against any one official shall not exceed two hundred fifty dollars in any one year.

In the absence or disability of any official the duties required herein shall devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause.

**Sec. 8.** RCW 36.40.040 and 1995 c 301 s 63 and 1995 c 194 s 7 are each reenacted and amended to read as follows:

Upon receipt of the estimates the county auditor or chief financial officer designated in a charter county shall prepare the county budget which shall set forth the complete financial program of the county for the ensuing fiscal year, showing the expenditure program and the sources of revenue by which it is to be financed.

The revenue section shall set forth the estimated receipts from sources other than taxation for each office, department, service, or institution for the ensuing fiscal year, the actual receipts for the first six months of the current fiscal year and the actual receipts for the last completed fiscal year, the estimated surplus at the close of the current fiscal year and the amount proposed to be raised by taxation.

The expenditure section shall set forth in comparative and tabular form by offices, departments, services, and institutions the estimated expenditures for the ensuing fiscal year, the appropriations for the current fiscal year, the actual expenditures for the first six months of the current fiscal year including all contracts or other obligations against current appropriations, and the actual expenditures for the last completed fiscal year.

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington state association of counties and the Washington state association of county officials.

The county auditor or chief financial officer designated in a charter county shall set forth separately in the annual budget to be submitted to the county legislative authority the total amount of emergency warrants issued during the preceding fiscal year, together with a statement showing the amount issued for each emergency, and the legislative authority shall include in the annual tax levy, a levy sufficient to raise an amount equal to the total of such warrants: PROVIDED, That the legislative authority may fund the warrants or any part thereof into bonds instead of including them in the budget levy.

**Sec. 9.** RCW 36.40.050 and 1963 c 4 s 36.40.050 are each amended to read as follows:

The budget shall be submitted by the auditor or chief financial officer designated in a charter county to the board of county commissioners on or before the first Tuesday in September of each year. The board shall thereupon consider the same in detail, making any revisions or additions it deems advisable.

**Sec. 10.** RCW 36.40.130 and 1963 c 4 s 36.40.130 are each amended to read as follows:

Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations or as revised by transfer as in RCW 36.40.100(~~((36.40.110))~~) or 36.40.120 provided shall not be a liability of the county, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his or her official bond. The county auditor shall issue no warrant and the county commissioners shall approve no claim for any expenditure in excess of the detailed budget appropriations or as revised under the provisions of RCW 36.40.100 through 36.40.130, except upon an order of a court of competent jurisdiction, or for emergencies as hereinafter provided. ~~((Any county commissioner, or county auditor, approving any claim or issuing any warrant in excess of any such budget appropriation except as herein provided shall forfeit to the county fourfold the amount of such claim or warrant which shall be recovered by action against such county commissioner or auditor, or all of them, and the several sureties on their official bonds.))~~

**Sec. 11.** RCW 36.40.210 and 1963 c 4 s 36.40.210 are each amended to read as follows:

On or before the twenty-fifth day of each month the auditor shall submit or make available to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the current fiscal year to the first day of said month, together with the unexpended and unencumbered balance of each appropriation. He or she shall also set forth the receipts from taxes and from sources other than taxation for the same periods.

**Sec. 12.** RCW 36.96.020 and 1979 ex.s. c 5 s 2 are each amended to read as follows:

On or before June 1st of 1980, and on or before June 1st of every year thereafter, each county auditor shall search available records and notify the county legislative authority if any special purpose districts located wholly or partially within the county appear to be inactive. ~~((Each county auditor shall also provide in the notifications made in 1982 and thereafter a list of all special purpose districts located wholly or partially within the county which, for three consecutive years before the notification, have failed to file statements with the county auditor as required in RCW 36.96.090.))~~ If the territory of any special purpose district is located within more than one county, the legislative authorities of all other counties within whose boundaries such a special purpose district lies shall also be notified by the county auditor. However, the authority to dissolve such a special purpose district as provided by this chapter shall rest solely with the legislative authority of the county which contains the greatest geographic portion of such special purpose district.

**Sec. 13.** RCW 36.96.090 and 1979 ex.s. c 5 s 9 are each amended to read as follows:

~~((1))~~ Every special purpose district shall file a statement with the auditor of each county in which it lies on or before December 31st of every year, beginning in the year 1979. The initial statement filed by each special purpose district shall contain For every newly created special purpose district, the auditor of each county in which the special purpose district is located shall provide the state auditor with the following information:



~~((a)) (1) The name of the special purpose district and a general description of its location (and geographical area within the county and within any other county;~~

~~(b) The statutes under which the special purpose district operates);~~

~~((c)) (2) The name, address, and telephone number (and remaining term of office) of each member of its governing authority; and~~

~~((d)) (3) The functions that the special purpose district is then presently performing and the purposes for which it was created.~~

~~((Subsequent annual statements need only identify the special purpose district and any of the above detailed information that has changed in the last year.~~

~~(2) Each county auditor, on or before January 31, 1980, and on or before January 31st each year thereafter, shall forward to the state auditor a summation of the information contained in the statements required to be filed in subsection (1) of this section together with information of each special purpose district located wholly or partially within the county that has been dissolved during the preceding year.)~~

**Sec. 14.** RCW 43.09.280 and 1995 c 301 s 18 are each amended to read as follows:

The expense of auditing public accounts shall be borne by each entity subject to such audit for the auditing of all accounts under its jurisdiction and the state auditor shall certify the expense of such audit to the fiscal or warrant-issuing officer of such entity, who shall immediately make payment to the state auditor. If the expense as certified is not paid by any local government within thirty days from the date of certification, the state auditor may certify the expense to the auditor of the county in which the local government is situated, who shall promptly issue his or her warrant on the county treasurer payable out of the current expense fund of the county, which fund, except as to auditing the financial affairs and making inspection and examination of the county, shall be reimbursed by the county auditor or chief financial officer designated in a charter county out of the money due the local government at the next monthly settlement of the collection of taxes and shall be transferred to the current expense fund.

**NEW SECTION. Sec. 15.** The following acts or parts of acts are each repealed:

(3) RCW 28A.350.010 (Registering warrants--All districts) and 1990 c 33 s 373, 1975 c 43 s 27, 1973 c 111 s 2, & 1969 ex.s. c 223 s 28A.66.010;

(4) RCW 28A.350.020 (Registering warrants--Second-class districts) and 1990 c 33 s 374, 1975 c 43 s 28, & 1969 ex.s. c 223 s 28A.66.020;

(5) RCW 28A.350.030 (Auditing accounts--All districts) and 1969 ex.s. c 223 s 28A.66.030;

(6) RCW 28A.350.040 (Auditor to draw and issue warrants--Second-class districts) and 1990 c 33 s 375, 1975 c 43 s 29, 1973 c 111 s 3, & 1969 ex.s. c 223 s 28A.66.040;

(7) RCW 28A.350.050 (Teacher must qualify before warrant drawn and issued or registered--All districts) and 1973 c 72 s 1, 1971 c 48 s 45, & 1969 ex.s. c 223 s 28A.66.050;

(8) RCW 28A.350.060 (Liability of auditor for warrants exceeding budget--All districts) and 1975-'76 2nd ex.s. c 118 s 31 & 1969 ex.s. c 223 s 28A.66.070;

(9) RCW 28A.350.070 (Orders for warrants not transferable--Second-class districts) and 1975 c 43 s 30 & 1969 ex.s. c 223 s 28A.66.080;

(10) RCW 36.18.110 (Monthly statement to county auditor) and 1985 c 44 s 3, 1984 c 128 s 3, & 1963 c 4 s 36.18.110;

(11) RCW 36.18.120 (Statements to be checked) and 1985 c 44 s 4, 1984 c 128 s 4, & 1963 c 4 s 36.18.120; and

(12) RCW 36.18.130 (Errors or irregularities) and 1963 c 4 s 36.18.130."

On page 1, line 1 of the title, after "auditors;" strike the remainder of the title and insert "amending RCW 36.17.045, 36.17.050, 36.22.010, 36.22.090, 36.22.170, 36.40.010, 36.40.030, 36.40.050, 36.40.130, 36.40.210, 36.96.020, 36.96.090, and 43.09.280; reenacting and amending RCW 36.40.040; and repealing RCW 28A.350.010, 28A.350.020, 28A.350.030, 28A.350.040, 28A.350.050, 28A.350.060, 28A.350.070, 36.18.110, 36.18.120, and 36.18.130."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1583 and advanced the bill as amended by the Senate to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Alexander spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1583, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1583, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1583, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

April 3, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1640 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The intent of this act is to clarify provisions governing disclosure of information related to University of Washington endowment investments, and thereby improve the university's ability to maximize the performance of its endowment portfolio. For endowment investments in privately managed funds, this act requires disclosure of the names of the funds, the amounts invested in the funds, and quarterly performance results for the endowment's portfolio of investments in such funds. These disclosures are intended to provide the public with information about the overall performance of the privately managed endowment investments, while prohibiting disclosure of proprietary information that could result in loss to the endowment or to persons who provide the proprietary information.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28B.20 RCW to read as follows:

The University of Washington must disclose: (1) The names and commitment amounts of the private funds in which it is invested; and (2) the aggregate quarterly performance results for its portfolio of investments in such funds. The University of Washington shall have formal policies addressing conflicts of interest in regard to the private funds in which the endowment is invested, in compliance with RCW 42.52.190, and shall post these policies on their public web site.

**Sec. 3.** RCW 42.56.270 and 2008 c 306 s 1 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or

19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information; ~~(and)~~

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business; and

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under section 2 of this act, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information.

On page 1, line 3 of the title, after "fund," strike the remainder of the title and insert "amending RCW 42.56.270; adding a new section to chapter 28B.20 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1640 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1640, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1640, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 94; Nays, 3; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks,

Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Anderson, Hasegawa and Liias.

Excused: Representative Flannigan.

HOUSE BILL NO. 1640, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 9, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1717 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 79A.05.115 and 2006 c 160 s 1 are each amended to read as follows:

(1) The commission shall develop and maintain a cross-state trail facility with appropriate appurtenances.

(2) This section expires July 1, ~~((2009))~~ 2019, ~~((if))~~ unless the department of transportation ~~((does not))~~ enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and ~~((Lind))~~ Marengo by July 1, ~~((2009))~~ 2019.

"**Sec. 2.** RCW 79A.05.120 and 2006 c 160 s 2 are each amended to read as follows:

(1) To facilitate completion of a cross-state trail under the management of the parks and recreation commission, management and control of lands known as the Milwaukee Road corridor shall be transferred between state agencies as follows on the date a franchise agreement is entered into for a rail line over portions of the Milwaukee Road corridor:

(a) Portions owned by the state between Ellensburg and the Columbia river that are managed by the parks and recreation commission are transferred to the department of transportation;

(b) Portions owned by the state between the west side of the Columbia river and Royal City Junction and between Warden and Lind that are managed by the department of natural resources are transferred to the department of transportation; ~~((and))~~

(c) Portions owned by the state between Lind and the Idaho border that are managed by the department of natural resources are transferred to the parks and recreation commission as of June 7, 2006; and

(d) Portions owned by the state between Lind and Marengo are transferred to the department of transportation.

(2) The department of natural resources may, by mutual agreement with the parks and recreation commission, transfer management authority over portions of the Milwaukee Road corridor to the state parks and recreation commission, at any time prior to the department of transportation entering into a franchise agreement.

(3) This section expires July 1, ~~((2009))~~ 2019, and no transfers shall occur ~~((if))~~ unless the department of transportation ~~((does not))~~ enters into a franchise agreement for a rail line over any of the

portions of the Milwaukee Road corridor between Ellensburg and ~~((Lind))~~ Marengo by July 1, ~~((2009))~~ 2019.

**Sec. 3.** RCW 79A.05.125 and 2006 c 160 s 3 are each amended to read as follows:

(1) The department of transportation shall negotiate ~~((a))~~ one or more franchises with ~~((a))~~ rail carriers to establish and maintain a rail line over portions of the Milwaukee Road corridor owned by the state between Ellensburg and ~~((Lind))~~ Marengo. The department of transportation may negotiate such a franchise with any qualified rail carrier. Criteria for negotiating the franchise and establishing the right-of-way include:

(a) Assurances that resources from the franchise will be sufficient to compensate the state for use of the property, including completion of a cross-state trail between Easton and the Idaho border;

(b) Types of payment for use of the franchise, including payment for the use of federally granted trust lands in the transportation corridor;

(c) Standards for maintenance of the line;

(d) Provisions ensuring that both the conventional and intermodal rail service needs of local shippers are met. Such accommodations may comprise agreements with the franchisee to offer or maintain adequate service or to provide service by other carriers at commercially reasonable rates;

(e) Provisions requiring the franchisee, upon reasonable request of any other rail operator, to provide rail service and interchange freight over what is commonly known as the Stampede Pass rail line from Cle Elum to Auburn at commercially reasonable rates;

(f) If any part of the franchise agreement is invalidated by actions or rulings of the federal surface transportation board or a court of competent jurisdiction, the remaining portions of the franchise agreement are not affected;

(g) Compliance with environmental standards; and

(h) Provisions for insurance and the coverage of liability.

(2) The franchise may provide for periodic review of financial arrangements under the franchise.

(3) The department of transportation, in consultation with the parks and recreation commission and the senate and house transportation committees, shall negotiate the terms of the franchise, and shall present the agreement to the parks and recreation commission for approval of as to terms and provisions affecting the cross-state trail or affecting the commission.

(4) This section expires July 1, ~~((2009))~~ 2019, ~~((f))~~ unless the department of transportation ~~((does not))~~ enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, ~~((2009))~~ 2019.

**Sec. 4.** RCW 79A.05.130 and 2006 c 160 s 4 are each amended to read as follows:

(1) The cross-state trail account is created in the custody of the state treasurer. Eleven million five hundred thousand dollars is provided to the state parks and recreation commission to acquire, construct, and maintain a cross-state trail. This amount may consist of: (a) Legislative appropriations intended for trail development; (b) payments for the purchase of federally granted trust lands; and (c) franchise fees derived from use of the rail corridor. The legislature intends that any amounts provided from the transportation fund are to be repaid to the transportation fund from franchise fees.

(2) The department shall deposit franchise fees from use of the rail corridor according to the following priority: (a) To the department of transportation for actual costs incurred in administering the franchise; (b) to the department of natural resources

as compensation for use of federally granted trust lands in the rail corridor; (c) to the transportation fund to reimburse any amounts transferred or appropriated from that fund by the legislature for trail development; (d) to the cross-state trail account, not to exceed eleven million five hundred thousand dollars, provided that this amount shall be reduced proportionate with any funds transferred or appropriated by the 1996 legislature or paid from franchise fees for the purchase of federally granted trust lands or for trail development; and (e) the remainder to the essential rail assistance account, created under RCW 47.76.250. Expenditures from the cross-state trail account may be used only for the acquisition, development, operation, and maintenance of the cross-state trail. Only the director of the state parks and recreation commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The commission may acquire land from willing sellers for the cross-state trail, but not by eminent domain.

(4) The commission shall adopt rules describing the cross-state trail.

(5) This section expires July 1, ~~((2009))~~ 2019, ~~((f))~~ unless the department of transportation ~~((does not))~~ enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, ~~((2009))~~ 2019.

**NEW SECTION. Sec. 5.** 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 June 30, 2009."

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "a rail line over the Milwaukee Road corridor; amending RCW 79A.05.115, 79A.05.120, 79A.05.125, and 79A.05.130; providing an effective date; providing contingent expiration dates; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1717 and advanced the bill as amended by the Senate to final passage.

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

Representatives Clibborn and Roach spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1717, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1717, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier,

Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 1717, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

April 8, 2009

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 1741 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1** A new section is added to chapter 28A.400 RCW to read as follows:

(1) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3), 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or conviction occurring after July 23, 1989, and before the effective date of this section, for any of the following felony crimes:

(a) Any felony crime involving the physical neglect of a child under chapter 9A.42 RCW;

(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW;

(c) Sexual exploitation of a child under chapter 9.68A RCW;

(d) Sexual offenses under chapter 9A.44 RCW where a minor is the victim;

(e) Promoting prostitution of a minor under chapter 9A.88 RCW;

(f) The sale or purchase of a minor child under RCW 9A.64.030;

(g) Violation of laws of another jurisdiction that are similar to those specified in (a) through (f) of this subsection.

(2) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3), 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or conviction occurring on or after the effective date of this section, for any of the following felony crimes or attempts, conspiracies, or solicitations to commit any of the following felony crimes:

(a) A felony violation of RCW 9A.88.010, indecent exposure;

(b) A felony violation of chapter 9A.42 RCW involving physical neglect;

(c) A felony violation of chapter 9A.32 RCW;

(d) A violation of RCW 9A.36.011, assault 1; 9A.36.021, assault 2; 9A.36.120, assault of a child 1; 9A.36.130, assault of a child 2; or any other felony violation of chapter 9A.36 RCW involving physical injury except assault 3 where the victim is eighteen years of age or older;

(e) A sex offense as defined in RCW 9.94A.030;

(f) A violation of RCW 9A.40.020, kidnapping 1; or 9A.40.030, kidnapping 2;

(g) A violation of RCW 9A.64.030, child selling or child buying;

(h) A violation of RCW 9A.88.070, promoting prostitution 1;

(i) A violation of RCW 9A.56.200, robbery 1; or

(j) A violation of laws of another jurisdiction that are similar to those specified in (a) through (i) of this subsection.

**Sec. 2.** RCW 28A.400.320 and 1990 c 33 s 383 are each amended to read as follows:

(1) The school district board of directors shall immediately terminate the employment of any classified employee who has contact with children during the course of his or her employment upon a guilty plea or conviction of any felony crime (~~involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction~~) specified under section 1 of this act.

(2) The employee shall have a right of appeal under chapter 28A.645 RCW including any right of appeal under a collective bargaining agreement. A school district board of directors is entitled to recover from the employee any salary or other compensation that may have been paid to the employee for the period between such time as the employee was placed on administrative leave, based upon criminal charges that the employee committed a felony crime specified under section 1 of this act, and the time termination becomes final.

**Sec. 3.** RCW 28A.400.330 and 1989 c 320 s 4 are each amended to read as follows:

The school district board of directors shall include in any contract for services with an entity or individual other than an employee of the school district a provision requiring the contractor to prohibit any employee of the contractor from working at a public school who has contact with children at a public school during the course of his or her employment and who has pled guilty to or been convicted of any felony crime (~~involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction~~) specified under section 1 of this act. The contract shall also contain a provision that any failure to comply with this section shall be grounds for the school district immediately terminating the contract.

**Sec. 4.** RCW 28A.405.470 and 1990 c 33 s 405 are each amended to read as follows:

The school district shall immediately terminate the employment of any person whose certificate or permit authorized under chapter 28A.405 or 28A.410 RCW is subject to revocation under RCW 28A.410.090((2)) (3) upon a guilty plea or conviction of any felony crime (~~involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the~~

victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction)) specified under section 1 of this act. Employment shall remain terminated unless the employee successfully prevails on appeal. A school district board of directors is entitled to recover from the employee any salary or other compensation that may have been paid to the employee for the period between such time as the employee was placed on administrative leave, based upon criminal charges that the employee committed a felony crime specified under section 1 of this act, and the time termination becomes final. This section shall only apply to employees holding a certificate or permit who have contact with children during the course of their employment.

**Sec. 5.** RCW 28A.410.090 and 2005 c 461 s 2 are each amended to read as follows:

(1)(a) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of any school district superintendent, educational service district superintendent, or private school administrator for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state. School district superintendents, educational service district superintendents, or private school administrators may file a complaint concerning any certificated employee of a school district, educational service district, or private school and this filing authority is not limited to employees of the complaining superintendent or administrator. Such written complaint shall state the grounds and summarize the factual basis upon which a determination has been made that an investigation by the superintendent of public instruction is warranted.

(b) If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred based on a written complaint alleging physical abuse or sexual misconduct by a certificated school employee filed by a parent or another person, but no complaint has been forwarded to the superintendent by a school district superintendent, educational service district superintendent, or private school administrator, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

(a) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

(b) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and

(c) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

(3)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction

of any felony crime ((involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction)) specified under section 1 of this act, in accordance with this section. The person whose certificate is in question shall be given an opportunity to be heard.

(b) Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under ((this subsection)) section 1(1) of this act shall apply to such convictions or guilty pleas which occur after July 23, 1989, and before the effective date of section 1 of this act.

(c) Mandatory permanent revocation upon a guilty plea or conviction of felony crimes specified under section 1(2) of this act shall apply to such convictions or guilty pleas that occur on or after the effective date of section 1 of this act.

(d) Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction of a crime specified under section 1 of this act occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

(4)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be suspended or revoked, according to the provisions of this subsection, by the authority authorized to grant the certificate upon a finding that an employee has engaged in an unauthorized use of school equipment to intentionally access material depicting sexually explicit conduct or has intentionally possessed on school grounds any material depicting sexually explicit conduct; except for material used in conjunction with established curriculum. A first time violation of this subsection shall result in either suspension or revocation of the employee's certificate or permit as determined by the office of the superintendent of public instruction. A second violation shall result in a mandatory revocation of the certificate or permit.

(b) In all cases under this subsection (4), the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in RCW 28A.410.100. Certificates or permits shall be suspended or revoked under this subsection only if findings are made on or after July 24, 2005. For the purposes of this subsection, "sexually explicit conduct" has the same definition as provided in RCW 9.68A.011.

(5) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a finding that the certificate holder obtained the certificate through fraudulent means, including fraudulent misrepresentation of required academic credentials or prior criminal record. In all cases under this subsection, the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in RCW 28A.410.100. Certificates or permits shall be revoked under this subsection only if findings are made on or after the effective date of this section.

**Sec. 6.** RCW 28A.410.110 and 1990 c 33 s 410 are each amended to read as follows:

In case any certificate or permit authorized under this chapter or chapter 28A.405 RCW is revoked, the holder shall not be eligible to receive another certificate or permit for a period of twelve months after the date of revocation. However, if the certificate or permit authorized under this chapter or chapter 28A.405 RCW was revoked

because of a guilty plea or the conviction of a felony crime (~~(involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction))~~ specified under section 1 of this act, the certificate or permit shall not be reinstated.

**Sec. 7.** RCW 9.96A.020 and 2008 c 134 s 26 are each amended to read as follows:

(1) Subject to the exceptions in subsections (3) through (5) of this section, and unless there is another provision of law to the contrary, a person is not disqualified from employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, nor is a person disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations solely because of a prior conviction of a felony. However, this section does not preclude the fact of any prior conviction of a crime from being considered.

(2) A person may be denied employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he or she was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years. However, for positions in the county treasurer's office, a person may be disqualified from employment because of a prior guilty plea or conviction of a felony involving embezzlement or theft, even if the time elapsed since the guilty plea or conviction is ten years or more.

(3) A person is disqualified for any certificate required or authorized under chapters 28A.405 or 28A.410 RCW, because of a prior guilty plea or the conviction of a felony (~~(involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction))~~ crime specified under section 1 of this act, even if the time elapsed since the guilty plea or conviction is ten years or more.

(4) A person is disqualified from employment by school districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children, because of a prior guilty plea or conviction of a felony (~~(involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction))~~ crime specified under section 1 of this act, even if the time elapsed since the guilty plea or conviction is ten years or more.

(5) The provisions of this chapter do not apply to issuance of licenses or credentials for professions regulated under chapter 18.130 RCW.

(6) Subsections (3) and (4) of this section (~~(only)~~) as they pertain to felony crimes specified under section 1(1) of this act apply

to a person applying for a certificate or for employment on or after July 25, 1993, and before the effective date of section 1 of this act. Subsections (3) and (4) of this section as they pertain to all felony crimes specified under section 1(2) of this act apply to a person applying for a certificate or for employment on or after the effective date of section 1 of this act. Subsection (5) of this section only applies to a person applying for a license or credential on or after June 12, 2008.

**Sec. 8.** RCW 43.43.845 and 2006 c 263 s 828 are each amended to read as follows:

(1) Upon a guilty plea or conviction of a person of any felony crime (~~(involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW, promoting prostitution of a minor under chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW 9A.64.030))~~ specified under section 1 of this act, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives (~~(information that a person has pled guilty to or been convicted of one of the felony crimes))~~ the notice required under subsection (1) of this section, the state patrol shall transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction, on at least a quarterly basis, to identify whether the person holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district, and provide this information to the Washington professional educator standards board and the school district employing the (~~(individual who pled guilty or was convicted of the crimes identified in subsection (1) of this section))~~ person.

**NEW SECTION. Sec. 9.** A new section is added to chapter 28A.405 RCW to read as follows:

(1) A school district superintendent shall immediately notify the office of the superintendent of public instruction when the district terminates the employment contract of a certificated employee on the basis of a guilty plea or a conviction of any felony crime specified under section 1 of this act.

(2) The office of the superintendent of public instruction shall maintain a record of the notices received under this section.

(3) This section applies only to employees holding a certificate or permit authorized under this chapter or chapter 28A.410 RCW who have contact with children during the course of employment.

**NEW SECTION. Sec. 10.** A new section is added to chapter 41.59 RCW to read as follows:

Nothing in this chapter may be construed to grant employers or employees the right to reach agreements that are in conflict with the termination provisions of RCW 28A.405.470.

**NEW SECTION. Sec. 11.** A new section is added to chapter 41.56 RCW to read as follows:

Nothing in this chapter may be construed to grant school district employers or classified school district employees the right to reach agreements that are in conflict with the termination provisions of RCW 28A.400.320."

On page 1, line 2 of the title, after "employees;" strike the remainder of the title and insert "amending RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090, 28A.410.110, 9.96A.020, and 43.43.845; adding a new section to chapter 28A.400 RCW; adding a new section to chapter 28A.405 RCW; adding a new section to chapter 41.59 RCW; and adding a new section to chapter 41.56 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1741 and advanced the bill as amended by the Senate to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Darneille and Dammeier spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 1741, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 1741, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1741, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

March 31, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1749 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"Sec. 1.** RCW 19.146.010 and 2008 c 78 s 3 are each amended to read as follows:

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500.

(3) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(4) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

(5) "Department" means the department of financial institutions.

(6) "Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(7) "Director" means the director of financial institutions.

(8) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(9) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(10) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

~~((+))~~ (1)(a) "Loan originator" means a natural person who ~~((+))~~ for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage loan application for a mortgage broker, or ((+)) (ii) offers or negotiates terms of a mortgage loan~~(, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain)~~. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

~~((+))~~ (b) "Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;



(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (b)(i) through (iv) of this subsection.

(c) "Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW.

(13) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

~~((+2))~~ (14) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan.

~~((+3))~~ (15) "Mortgage loan originator" has the same meaning as "loan originator."

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(17) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

~~((+4))~~ (18) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

~~((+5))~~ (19) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

~~((+6))~~ (20) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, or Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(21) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(22) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

**Sec. 2.** RCW 19.146.020 and 2006 c 19 s 3 are each amended to read as follows:

~~(1) ((Except as provided under subsections (2) through (4) of this section,))~~ The following are exempt from all provisions of this chapter:

~~(a)((+))~~ Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;~~(; and~~

~~(ii) Subject to the director's written approval, the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank);~~

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act;

(c) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

~~(e) ((Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;~~

~~(+))~~ A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

~~((g) Any mortgage broker approved and subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation;~~

~~(+))~~ (f) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1) ~~((+))~~ (f); ~~(and~~

~~(+))~~ (g) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1);

(h) Registered mortgage loan originators, or any individual required to be registered; and

(i) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

~~(2) ((Those persons and their loan originators otherwise exempt under subsection (1)(c), (g), or (4) of this section must comply with RCW 19.146.0201 through 19.146.080. For violations of RCW 19.146.0201 through 19.146.080, the director has authority to issue a cease and desist order as provided in RCW 19.146.220 and 19.146.227, to impose penalties as provided in RCW 19.146.220, and to obtain and review books and records that are relevant to any allegation of such a violation as provided in RCW 19.146.235.~~

~~(3))~~ Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, the licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by this section may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter.

~~((4) The director may exempt an exclusive agent under subsection (1)(a) of this section provided that the affiliate in subsection (1)(a) of this section:~~

~~(a) Applies for and maintains a license as provided by subsection (3) of this section;~~

~~(b) Has on file with the director a binding written agreement under which the affiliate assumes responsibility for the exclusive agent's violations of this chapter or rules adopted under this chapter; and~~

~~(c) Maintains a bond or other security in an amount required by the director that runs to the benefit of the state and any person who suffers loss by reason of the exclusive agent's violation of this chapter or rules adopted under this chapter.)~~

**Sec. 3.** RCW 19.146.0201 and 2006 c 19 s 4 are each amended to read as follows:

It is a violation of this chapter for a loan originator~~(;)~~ or mortgage broker required to be licensed under this chapter~~(; or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1)(c), (g), or (4))~~ to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) ~~((g) or (h))~~ (f) or a lender with whom the mortgage broker maintains a

written correspondent or loan broker agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(11) Fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known as the "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C. Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a); the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 C.F.R. Part 310, as these acts existed on January 1, 2007, or such subsequent date as may be provided by the department by rule, in any advertising of residential mortgage loans, or any other applicable mortgage broker or loan originator activities covered by the acts. The department may adopt by rule requirements that mortgage brokers and loan originators comply with other applicable federal statutes and regulations in any advertising of residential mortgage loans, or any other mortgage broker or loan originator activity;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, act as a loan originator in any transaction (i) in which the loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage services to the borrower, a loan originator, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL

ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY. YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage broker business activities and shall maintain such person's mortgage broker business records separate and apart from the real estate broker activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the broker business firms results. This subsection (14)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage broker activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

**Sec. 4.** RCW 19.146.205 and 2006 c 19 s 10 are each amended to read as follows:

(1) Application for a mortgage broker license under this chapter ~~((shall))~~ must be ~~((in writing))~~ made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(2) As a part of or in connection with an application for any license under this section, or periodically upon license renewal, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, ~~((and))~~ the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(5) At the time of filing an application for a license under this chapter, each applicant shall pay to the director through the nationwide mortgage licensing system and registry the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

~~((4))~~ (6) Except as provided in (b) of this subsection, each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount ((of not greater than sixty thousand dollars nor less than twenty thousand dollars)) which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director ((may)) shall take the form of a ((uniform bond amount for all licensees or the director may establish by rule a schedule establishing a)) range of bond amounts which shall vary according to the annual ((average number of loan originators of a)) loan origination volume of the licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed

to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

~~(b) ((Subsection (4)(b) and (c) of this section applies only to applications received on or before January 1, 2007. Before January 1, 2007, in lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.~~

~~(c) Before January 1, 2007, in lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection)) If the director determines that the bond required in (a) of this subsection is not reasonably available, the director shall waive the requirements for such a bond. The mortgage recovery fund account is created in the custody of the state treasurer. The director is authorized to charge fees to fund the account. All fees charged under this section, except those retained by the director for administration of the fund, must be deposited into the mortgage recovery fund account. Expenditures from the account may be used only for the same purposes as the surety bond as described in (a) of this subsection. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. A person entitled to receive payment from the mortgage recovery fund may only receive reimbursement after a court of competent jurisdiction has determined the actual damages caused by the licensee. The director may determine by rule the procedure for recovery; the amount each mortgage broker must pay through the nationwide mortgage licensing system and registry for deposit in the mortgage recovery fund; and the amount necessary to administer the fund.~~

**Sec. 5.** RCW 19.146.228 and 2006 c 19 s 15 are each amended to read as follows:

The director shall establish fees (~~(by rule in accordance with the policy established in RCW 43.24.086 and fees shall be)~~) sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and

(3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers and loan originators shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker or loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account.

**Sec. 6.** RCW 19.146.235 and 2006 c 19 s 16 are each amended to read as follows:

The director or a designee has authority to conduct investigations and examinations as provided in this section.

(1) For the purposes of investigating violations or complaints arising under this chapter, the director or his or her designee may make an investigation of the operations of any mortgage broker or loan originator as often as necessary in order to carry out the purposes of this chapter.

(2) Every mortgage broker shall make available to the director or a designee its books and records relating to its operations.

(a) For the purpose of examinations, the director or his or her designee may have access to such books and records during normal business hours and interview the officers, principals, loan originators, employees, independent contractors, and agents of the licensee concerning their business.

(b) For the purposes of investigating violations or complaints arising under this chapter, the director may at any time, either personally or by a designee, investigate the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person acts or claims to act under, or without the authority of, this chapter.

(c) The director or designated person may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry.

(3) (~~Once during the first five years of licensing, including branch licensing,)) The director may visit, either personally or by designee, the licensee's place or places of business to conduct an examination. The scope of the examination is limited to documents and information necessary to determine compliance with this chapter and attendant rules. In general, the examination scope may include:~~

(a) A review for trust accounting compliance;

(b) Loan file review to determine the mortgage broker's compliance with this chapter and applicable federal regulations covering the business of mortgage brokering and lending;

(c) Interviews for the purpose of understanding business and solicitation practices, transactional events, disclosure compliance, complaint resolution, or determining specific compliance with this chapter and the attendant rules; and

(d) A review of general business books and records, including employee records, for the purpose of determining specific compliance with this chapter and the attendant rules.

(4) The purpose of an examination is to make certain that licensees are conducting business in compliance with the law. Therefore, protocols for examination findings and corrective action directed from an examination must be established by rule of the director. To accomplish this purpose, these protocols must include the following:

(a) A reporting mechanism from the director to the licensee;

(b) A process for clear notification of violations and an opportunity for response by the licensee; and

(c) The criteria by which the frequency of examinations will be determined.

(5) If the examination findings clearly identify the need to expand the scope of the examination, the director or a designee, upon five days' written notification to the licensee with an explanation of the need, may:

(a) Expand the examination review to locations other than the examined location regardless of the number of years a location has held a license; or

(b) Expand the time period of the examination beyond the five-year period of licensing, provided the expansion of time does not exceed a date certain identified in the written notification in this subsection.

(6) The director or a designee may consider reports made by independent certified professionals for the mortgage broker covering the same general subject matter as the examination. The director or a designee may incorporate all or part of the report in the report of the examination.

(7) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations. The cost of these services for investigations only must be billed in accordance with RCW 19.146.228.

(8) The director may establish by rule travel costs for examination of out-of-state entities.

(9)(a) No person subject to examination or investigation under this chapter may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(b) A person who commits an act under (a) of this subsection is guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than twenty thousand dollars, or both.

**NEW SECTION. Sec. 7.** A new section is added to chapter 19.146 RCW to read as follows:

(1) Each loan originator applicant shall complete at least twenty hours of prelicensing education approved by the nationwide mortgage licensing system and registry. The prelicensing education shall include at least three hours of federal law and regulations; three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; two hours of training related to lending standards for the nontraditional mortgage product

marketplace; and at least two hours of training specifically related to Washington law.

(2) A loan originator applicant having successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(3) This chapter does not preclude any prelicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such an employer or entity. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

**NEW SECTION. Sec. 8.** A new section is added to chapter 19.146 RCW to read as follows:

(1) To obtain a loan originator license, an individual must pass a test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

(2) An individual is not considered to have passed a test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(a) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(b) After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(c) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer must retake the test, not taking into account any time during which that individual is a registered mortgage loan originator.

(3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the loan originator applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

**Sec. 9.** RCW 19.146.300 and 2006 c 19 s 19 are each amended to read as follows:

(1) Application for a loan originator license under this chapter ~~((shall))~~ ~~must be ((in writing))~~ made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the loan originator applicant, unless waived by the director; and

(b) Such other information regarding the loan originator applicant's background, experience, character, and general fitness as the director may require by rule.

(2)(a) As part of or in connection with an application for any license under this section, or periodically upon license renewal, the loan originator applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, ~~((and))~~ the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal

history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(b) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(c) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(d) As part of or in connection with an application for a license under this section, the loan originator applicant must furnish to the nationwide mortgage licensing system and registry personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) At the time of filing an application for a license under this chapter, each loan originator applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 19.146.228 to cover the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund.

(4) The director must establish by rule procedures for accepting and processing incomplete applications.

**Sec. 10.** RCW 19.146.310 and 2006 c 19 s 20 are each amended to read as follows:

(1) The director shall issue and deliver a loan originator license if, after investigation, the director makes the following findings:

(a) The loan originator applicant has paid the required license fees;

(b) The loan originator applicant has met the requirements of RCW 19.146.300 ;

(c) The loan originator applicant has ~~((not))~~ never had a license issued under this chapter or any similar state statute ~~((suspended or))~~ revoked ~~((within five years of the filing of the present application))~~ except that, for the purposes of this subsection, a subsequent formal vacation of a revocation is not a revocation;

(d)(i) The loan originator applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or ~~((a felony))~~ has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court within seven years of the filing of the present application; and

(ii) The loan originator applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court at any time preceding the date of application if the

felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(e) The loan originator applicant has passed a written examination whose content shall be established by rule of the director;

(f) The loan originator applicant has not been found to be in violation of this chapter or rules;

(g) The loan originator applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly and fairly within the purposes of this chapter. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years; and

(h) The loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, a minimum of eight hours of continuing education as established by rule of the director. ~~((The director shall establish standards in rule for approval of professional organizations offering continuing education to loan originators. The director may approve continuing education taken by loan originators in other states if the director is satisfied that such continuing education meets the requirements of the continuing education required by this chapter.))~~

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the loan originator license. The director shall notify the loan originator applicant of the denial and return to the loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a new loan originator license under this chapter to any licensee that has a valid license and is otherwise in compliance with this chapter.

(4) A loan originator license issued under this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall establish rules regarding the loan originator license renewal process created under this chapter.

(5) A loan originator licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a loan originator license and to facilitate the business of a loan originator, an interim loan originator license with a fixed date of expiration may be issued when the director determines that the loan originator has substantially fulfilled the requirements for loan originator licensing as defined by rule.

**NEW SECTION. Sec. 11.** A new section is added to chapter 19.146 RCW to read as follows:

(1) A licensed mortgage loan originator must complete a minimum of eight hours of continuing education, eight of which is approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics, which must include instruction on

fraud, consumer protection, and fair lending issues; and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) The nationwide mortgage licensing system and registry must review and approve continuing education courses. Review and approval of a continuing education course must include review and approval of the course provider.

(3) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(5) A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry for any state must have their credits accepted as credit towards completion of continuing education requirements in this state.

(6) This section does not preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

**NEW SECTION. Sec. 12.** A new section is added to chapter 19.146 RCW to read as follows:

The director shall establish a process whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director.

**NEW SECTION. Sec. 13.** A new section is added to chapter 19.146 RCW to read as follows:

For the purposes of implementing an orderly and efficient licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

**NEW SECTION. Sec. 14.** A new section is added to chapter 31.04 RCW to read as follows:

An individual defined as a mortgage loan originator shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

**NEW SECTION. Sec. 15.** A new section is added to chapter 19.146 RCW to read as follows:

(1) Except as otherwise provided in section 1512 of the S.A.F.E. act, the requirements under any federal law or chapter 42.56 RCW regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Information and material

may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For the purposes under subsection (1) of this section, the director is authorized to enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section is not subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) of this section is superseded by the requirements of this section.

(5) This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

**NEW SECTION. Sec. 16.** A new section is added to chapter 19.146 RCW to read as follows:

In order to fulfill the purposes of this act, the director is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

**NEW SECTION. Sec. 17.** A new section is added to chapter 19.146 RCW to read as follows:

Each mortgage broker licensee shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain the information as the nationwide mortgage licensing system and registry may require.

**NEW SECTION. Sec. 18.** A new section is added to chapter 19.146 RCW to read as follows:

The director is authorized to regularly report violations of this act, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry.

**NEW SECTION. Sec. 19.** (1) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 4, 6 through 9, 11, 12, 14, and 17 are effective January 1, 2010.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, mortgage loan originators who were previously exempt as exclusive agents under RCW 19.146.020(1)(a)(ii) must obtain a mortgage loan originator license under this chapter before July 1, 2010.

**NEW SECTION. Sec. 20.** The director of financial institutions or the director's designee may take the actions necessary to ensure this act is implemented on July 1, 2010."

On page 1, line 3 of the title, after "2008;" strike the remainder of the title and insert "amending RCW 19.146.010, 19.146.020, 19.146.0201, 19.146.205, 19.146.228, 19.146.235, 19.146.300, and 19.146.310; adding new sections to chapter 19.146 RCW; adding a new section to chapter 31.04 RCW; creating new sections; and providing an effective date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1749 and advanced the bill as amended by the Senate to final passage.

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

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

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1749, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1749, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1749, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 9, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1769 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 13.34.030 and 2003 c 227 s 2 are each amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(5) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(6) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(7) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(8) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(9) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include



but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(10) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(11) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty- five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

~~((H))~~ (12) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

~~((H2))~~ (13) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing ~~((services))~~ assistance, capable of preventing the need for out-of-home placement while protecting the child. ~~((Housing services may include, but are not limited to, referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.~~

~~((H3))~~ (14) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

~~((H4))~~ (15) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half- sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in 25 U.S.C. Sec. 1903(4).

~~((H5))~~ (16) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety,

and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

**Sec. 2.** RCW 13.34.065 and 2008 c 267 s 2 are each amended to read as follows:

(1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1).

(d) If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative under (b) of this subsection or with another suitable person under (d) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department.

**Sec. 3.** RCW 13.34.130 and 2007 c 413 s 6 and 2007 c 412 s 2 are each reenacted and amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose ~~((those))~~ services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or the department or a licensed child placing agency for supervision of the child's placement. The department or agency supervising the child's placement has the authority to place the child, subject to review and approval by the court (i) with a relative as defined in RCW 74.15.020(2)(a), (ii) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW, or (iii) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child. Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260. The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a) when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is: (A) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; and (B) willing and available to care for the child.

(2) Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the

child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(3) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(5) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be

grounds for removal of the child from the relative's home, subject to review by the court.

**Sec. 4.** RCW 13.34.138 and 2007 c 413 s 8 and 2007 c 410 s 1 are each reenacted and amended to read as follows:

(1) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first. The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(a) The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The requirements for the initial review hearing, including the in-court review requirement, shall be accomplished within existing resources.

(b) The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145 (1)(a) or 13.34.134.

(2)(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) Prior to the child returning home, the department must complete the following:

(i) Identify all adults residing in the home and conduct background checks on those persons;

(ii) Identify any persons who may act as a caregiver for the child in addition to the parent with whom the child is being placed and determine whether such persons are in need of any services in order to ensure the safety of the child, regardless of whether such persons are a party to the dependency. The department or supervising agency may recommend to the court and the court may order that placement of the child in the parent's home be contingent on or delayed based on the need for such persons to engage in or complete services to ensure the safety of the child prior to placement. If services are recommended for the caregiver, and the caregiver fails to engage in or follow through with the recommended services, the department or supervising agency must promptly notify the court; and

(iii) Notify the parent with whom the child is being placed that he or she has an ongoing duty to notify the department or supervising agency of all persons who reside in the home or who may act as a caregiver for the child both prior to the placement of the child in the home and subsequent to the placement of the child in the home as long as the court retains jurisdiction of the dependency proceeding or the department is providing or monitoring either remedial services to the parent or services to ensure the safety of the child to any caregivers.

Caregivers may be required to engage in services under this subsection solely for the purpose of ensuring the present and future safety of a child who is a ward of the court. This subsection does not grant party status to any individual not already a party to the dependency proceeding, create an entitlement to services or a duty on the part of the department or supervising agency to provide services, or create judicial authority to order the provision of services to any person other than for the express purposes of this section or RCW 13.34.025 or if the services are unavailable or unsuitable or the person is not eligible for such services.

(c) If the child is not returned home, the court shall establish in writing:

(i) Whether the agency is making reasonable efforts to provide services to the family and eliminate the need for placement of the child. If additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents, the court shall order that reasonable services be offered specifying such services;

(ii) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(iii) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(iv) Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;

(v) Whether there is a continuing need for placement;

(vi) Whether a parent's homelessness or lack of suitable housing is a significant factor delaying permanency for the child by preventing the return of the child to the home of the child's parent and whether housing assistance should be provided by the department or supervising agency;

(vii) Whether the child is in an appropriate placement which adequately meets all physical, emotional, and educational needs;

~~((viii))~~ (viii) Whether preference has been given to placement with the child's relatives;

~~((viiii))~~ (ix) Whether both in-state and, where appropriate, out-of-state placements have been considered;

~~((ix))~~ (x) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

~~((x))~~ (xi) Whether terms of visitation need to be modified;

~~((xii))~~ (xii) Whether the court-approved long-term permanent plan for the child remains the best plan for the child;

~~((xiii))~~ (xiii) Whether any additional court orders need to be made to move the case toward permanency; and

~~((xiv))~~ (xiv) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(d) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(3)(a) In any case in which the court orders that a dependent child may be returned to or remain in the child's home, the in-home placement shall be contingent upon the following:

(i) The compliance of the parents with court orders related to the care and supervision of the child, including compliance with an agency case plan; and

(ii) The continued participation of the parents, if applicable, in available substance abuse or mental health treatment if substance abuse or mental illness was a contributing factor to the removal of the child.

(b) The following may be grounds for removal of the child from the home, subject to review by the court:

(i) Noncompliance by the parents with the agency case plan or court order;

(ii) The parent's inability, unwillingness, or failure to participate in available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect; or

(iii) The failure of the parents to successfully and substantially complete available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect.

(c) In a pending dependency case in which the court orders that a dependent child may be returned home and that child is later

removed from the home, the court shall hold a review hearing within thirty days from the date of removal to determine whether the permanency plan should be changed, a termination petition should be filed, or other action is warranted. The best interests of the child shall be the court's primary consideration in the review hearing.

(4) The court's ~~((ability))~~ authority to order housing assistance under ~~((RCW 13.34.130 and this section))~~ this chapter is: (a) Limited to cases in which ~~((homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement))~~ a parent's homelessness or lack of suitable housing is a significant factor delaying permanency for the child and housing assistance would aid the parent in providing an appropriate home for the child; and (b) subject to the availability of funds appropriated for this specific purpose. Nothing in this chapter shall be construed to create an entitlement to housing assistance nor to create judicial authority to order the provision of such assistance to any person or family if the assistance or funding are unavailable or the child or family are not eligible for such assistance.

(5) The court shall consider the child's relationship with siblings in accordance with RCW 13.34.130(3)."

On page 1, line 2 of the title, after "matters;" strike the remainder of the title and insert "amending RCW 13.34.030 and 13.34.065; and reenacting and amending RCW 13.34.130 and 13.34.138."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1769 and advanced the bill as amended by the Senate to final passage.

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

Representative Orwall spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1769, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1769, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko,

Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1769, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 7, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1789 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.728 and 2008 c 231 s 34 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. The department may approve a jail certification from a correctional agency that calculates earned release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); (C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense

under chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a program developed by the department, for transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department denies transfer to community custody in lieu of earned early release pursuant to (c) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

(e) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the

offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to subsection (2)(d) of this section;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870; and

(10) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement.

**NEW SECTION. Sec. 2.** This act takes effect August 1, 2009."

On page 1, line 3 of the title, after "offenders;" strike the remainder of the title and insert "amending RCW 9.94A.728; and providing an effective date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1789 and advanced the bill as amended by the Senate to final passage.

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

Representatives Dammeier and Dickerson spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1789, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1789, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 1789, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 10, 2009

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1790 with the following amendment:

On page 4, on line 9, after "9A.46.110" strike all material through "1983," on line 10

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1790 and advanced the bill as amended by the Senate to final passage.

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

Representative O'Brien spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 1790, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1790, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

HOUSE BILL NO. 1790, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 14, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1791 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.505 and 2009 c 28 s 6 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.507, relating to certain sex offenses;

(ix) RCW 9.94A.535, relating to exceptional sentences;

(x) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xi) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

**Sec. 2.** RCW 9.94A.660 and 2006 c 339 s 302 and 2006 c 73 s 10 are each reenacted and amended to read as follows:

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a sentence under this section may be made by the court, the offender, or the state. ~~((If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:~~

~~— (a) Whether the offender suffers from drug addiction;~~

~~— (b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;~~

~~— (c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and~~

~~— (d) Whether the offender and the community will benefit from the use of the alternative.~~

~~— (3) The examination report must contain:~~

~~— (a) Information on the issues required to be addressed in subsection (2) of this section; and~~

~~— (b) A proposed treatment plan that must, at a minimum, contain:~~

~~— (i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;~~

~~— (ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment and treatment in the community;~~

~~— (iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and~~



~~(iv) Recommended crime-related prohibitions and affirmative conditions:~~

~~(4) After receipt of the examination report,)) (3) If the sentencing court determines that the offender is eligible for this alternative and that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection ~~((5))~~ (4) of this section or a residential chemical dependency treatment-based alternative under subsection ~~((6))~~ (5) of this section. If the court is considering the residential chemical dependency treatment-based alternative under subsection (5) of this section, then the court may order an examination of the offender as described in subsection (5) of this section. To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.~~

~~((5))~~ (4) The prison-based alternative shall include:

(a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range or twelve months, whichever is greater. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

(b) ~~((The remainder of))~~ One-half the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;

(c) Crime-related prohibitions including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.715 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

~~((6))~~ (5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative in this subsection, then the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must also contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(c) The residential chemical dependency treatment-based alternative shall include:

~~((a))~~ (i) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the plan under ~~((subsection (3))~~(b) of this ~~((section))~~ subsection. The department may impose conditions and sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7), 9.94A.737, and 9.94A.740. If the court imposes a sentence under this subsection, then the treatment provider will be required to send the treatment plan to the court within thirty days of the offender's arrival to the residential chemical dependency treatment program. The court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

~~((b))~~ (ii) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:

~~((c))~~ (A) Authorize the department to terminate the offender's community custody status on the expiration date determined under ~~((a) of this)~~ subsection (5)(c)(i) of this section; or

~~((d))~~ (B) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

~~((e))~~ (C) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715;

~~((f))~~ (ii) If the court imposes a term of total confinement under ~~((b)(iii))~~ (c)(ii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.

~~((g))~~ (6) If the court imposes a sentence under this section, the court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court may impose any of the following conditions:

(a) Devote time to a specific employment or training;

(b) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(c) Report as directed to a community corrections officer;

- (d) Pay all court-ordered legal financial obligations;
- (e) Perform community restitution work;
- (f) Stay out of areas designated by the sentencing court;
- (g) Such other conditions as the court may require such as affirmative conditions.

~~((8))~~ (7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the terms of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

~~((9))~~ (8) If an offender sentenced to the prison-based alternative under subsection ~~((5))~~ (4) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

~~((10))~~ (9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

~~((11))~~ (10) Costs of examinations and preparing treatment plans under ~~((subsections (2) and (3) of))~~ this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.

**Sec. 3.** RCW 9.94A.660 and 2008 c 231 s 30 are each amended to read as follows:

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a ~~((sentence under this section))~~ special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for ~~((this))~~ an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under section 4 of this act or a residential chemical dependency treatment-based alternative under section 5 of this act. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

~~((a))~~ (i) Whether the offender suffers from drug addiction;  
~~((b))~~ (ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

~~((c))~~ (iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

~~((d))~~ (iv) Whether the offender and the community will benefit from the use of the alternative.

~~((3))~~ (b) The examination report must contain:

~~((a) Information on the issues required to be addressed in subsection (2) of this section; and~~

~~((b) A proposed treatment plan that must, at a minimum, contain:~~

~~((i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;~~

~~((ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment and treatment in the community;~~

~~((iii))~~ (i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

~~((iv))~~ (ii) Recommended crime-related prohibitions and affirmative conditions.

~~((4) After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection (5) of this section or a residential chemical dependency treatment-based alternative under subsection (6) of this section. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.~~

~~((5) The prison-based alternative shall include:~~

~~((a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range or twelve months;~~

whichever is greater. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

~~(b) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;~~

~~(c) Crime-related prohibitions including a condition not to use illegal controlled substances;~~

~~(d) A requirement to submit to urinalysis or other testing to monitor that status; and~~

~~(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.~~

~~(6) The residential chemical dependency treatment-based alternative shall include:~~

~~(a) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the plan under subsection (3)(b) of this section. The court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;~~

~~(b) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:~~

~~(i) Authorize the department to terminate the offender's community custody status on the expiration date determined under (a) of this subsection; or~~

~~(ii) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or~~

~~(iii) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701;~~

~~(c) If the court imposes a term of total confinement under (b)(iii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.~~

~~(7) The)) (6) When a court imposes a sentence of community custody under this section:~~

~~(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.~~

~~((8) The court may impose any of the following conditions:~~

~~(a) Pay all court-ordered legal financial obligations; or~~

~~(b) Perform community restitution work.~~

~~(9)(a)) (b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and RCW 9.94A.737.~~

~~(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.~~

~~(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.~~

~~(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.~~

~~(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.~~

~~((10)) (8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.~~

~~((11) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.~~

~~((12)) (9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.~~

~~((13)) (10) Costs of examinations and preparing treatment plans under ((subsections (2) and (3) of this section)) a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.~~

**NEW SECTION. Sec. 4.** (1) A sentence for a prison-based special drug offender sentencing alternative shall include:

(a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;

(b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(c) Crime-related prohibitions, including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

(3) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

(4) If an offender sentenced to the prison-based alternative under this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

**NEW SECTION. Sec. 5.** (1) A sentence for a residential chemical dependency treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential chemical dependency treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody.

**NEW SECTION. Sec. 6.** Sections 4 and 5 of this act are each added to chapter 9.94A RCW.

**NEW SECTION. Sec. 7.** Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**NEW SECTION. Sec. 8.** Sections 1 and 3 through 5 of this act take effect August 1, 2009.

**NEW SECTION. Sec. 9.** Section 2 of this act expires August 1, 2009."

On page 1, line 2 of the title, after "provisions;" strike the remainder of the title and insert "amending RCW 9.94A.505 and 9.94A.660; reenacting and amending RCW 9.94A.660; adding new sections to chapter 9.94A RCW; providing an effective date; providing an expiration date; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1791 and advanced the bill as amended by the Senate to final passage.

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

Representatives Dickerson and Dammeier spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1791, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1791, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko,

Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1791, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 2, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1201 with the following amendment:

On page 4, beginning on line 5, after "9.94A.612" strike "or 72.09.712"

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1201 and advanced the bill as amended by the Senate to final passage.

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

Representatives Orwall and Dammeier spoke in favor of the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1201, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1201, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Goodman, Grant-Herriot, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1201, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

April 8, 2009

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 1402 with the following amendment:

On page 5, after line 7, insert the following:

"(9) A medical provider who discusses issues on appeal with the department or with any employer or worker or representative of any employer or worker in violation of this section shall not be held liable for such communication."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1402 and advanced the bill as amended by the Senate to final passage.

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

Representatives Williams, Conway, Campbell and Kessler spoke in favor of the passage of the bill.

Representatives Condotta and Chandler spoke against the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1402, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1402, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 56; Nays, 41; Absent, 0; Excused, 1.

Voting yea: Representatives Appleton, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Finn, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Chandler, Condotta, Cox, Crouse, Dammeier, DeBolt, Driscoll, Ericksen, Grant-Herriot, Haler, Herrera, Hinkle, Hope, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Orcutt, Parker, Pearson, Priest, Probst, Roach, Rodne, Ross, Schmick, Seaquist, Shea, Short, Smith, Taylor, Wallace, Walsh and Warnick.

Excused: Representative Flannigan.

SUBSTITUTE HOUSE BILL NO. 1402, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

April 13, 2008

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1212 with the following amendments:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature finds that the current system of stopping payment of industrial insurance death benefits to surviving spouses upon the remarriage of the surviving spouse may be based on archaic notions that are not in-line with modern society. Many pension programs, including the law enforcement officers' and firefighters' retirement system, have removed the remarriage prohibition and allow surviving spouses to continue to receive benefits after remarriage. The legislature further finds that some surviving spouses of law enforcement officers' and firefighters' retirement system members have expressed concerns that terminating benefits upon remarriage penalizes the spouse for moving on with his or her life. The legislature declares that it is time to study the policy of terminating industrial insurance death benefits upon remarriage of the surviving spouse and determine whether changes need to be made to the workers' compensation system.

(2) The workers' compensation advisory committee must study the current practice of terminating industrial insurance death benefits upon remarriage of the surviving spouse of a law enforcement officers' and firefighters' retirement system member. The study must address the following:

(a) The reasons behind the policy of terminating death benefits upon remarriage of the surviving spouse;

(b) Potential costs to the workers' compensation system if industrial insurance death benefits are continued after remarriage of the surviving spouse of a law enforcement officers' and firefighters' retirement system member, and potential costs if this policy were applied to all workers;

(c) Methods to offset potential costs, including providing a reduced benefit if the surviving spouse chooses to receive benefits for life;

(d) How workers' compensation death benefits are administered in other states and whether any state continues these benefits after remarriage; and

(e) Such other items the workers' compensation advisory committee deems necessary.

(3) The workers' compensation advisory committee must report its findings to the appropriate committees of the legislature by December 1, 2010.

(4) This section expires January 1, 2011."

On page 1, line 3 of the title, after "system;" strike the remainder of the title and insert "creating a new section; and providing an expiration date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

**SENATE AMENDMENT TO HOUSE BILL****MOTION**

Representative Chandler moved that the House concur in the Senate amendment to HOUSE BILL NO. 1212.

Representatives Chandler and Condotta spoke in favor of the motion concur in the Senate amendment.

Representative Kirby spoke against the motion to concur in the Senate amendment.

The Speaker (Representative (Representative Morris presiding) stated the question before the House to be the motion to concur in the Senate amendment to House Bill No. 1212.

The motion to concur in the Senate amendment to House Bill No. 1212 was not adopted.

The House did not concur in the Senate amendment to HOUSE BILL NO. 1212 and asked the Senate to recede therefrom.

**MESSAGE FROM THE SENATE**

April 9, 2009

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1935 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 70.128.040 and 2007 c 184 s 8 are each amended to read as follows:

(1) The department shall adopt rules and standards with respect to adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to persons who are developmentally disabled or elderly. In developing rules and standards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for applicants and providers explaining licensure requirements and procedures.

(2)(a) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administration. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and capacities of the various populations served by adult family homes. During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(b) In addition, the department shall engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive

representative of the adult family home licensees selected in accordance with RCW 70.128.043 and with other affected interests before adopting requirements that affect adult family home licensees.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter.

(4) The department shall establish a specialty license to include geriatric specialty certification for providers who have successfully completed the University of Washington school of nursing certified geriatric certification program and testing.

**Sec. 2.** RCW 70.128.005 and 2001 c 319 s 1 are each amended to read as follows:

(1) The legislature finds that:

(a) Adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents.

(b) Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. ~~((The legislature further finds that))~~ Different populations living in adult family homes, such as ~~((the developmentally disabled))~~ persons with developmental disabilities and ~~((the))~~ elderly persons, often have significantly different needs and capacities from one another.

(c) There is a need to update certain restrictive covenants to take into consideration the legislative findings cited in (a) and (b) of this subsection; the need to prevent or reduce institutionalization; and the legislative and judicial mandates to provide care and services in the least restrictive setting appropriate to the needs of the individual. Restrictive covenants which directly or indirectly restrict or prohibit the use of property for adult family homes (i) are contrary to the public interest served by establishing adult family homes and (ii) discriminate against individuals with disabilities in violation of RCW 49.60.224.

(2) It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes. Furthermore, the development and operation of adult family homes that can provide quality personal care and special care services should be encouraged.

(3) The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

(4) The legislature finds that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of vulnerable adults residing in adult family homes. The health, safety, and well-being of vulnerable adults must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, or whether to take other licensing actions.

**NEW SECTION. Sec. 3.** A new section is added to chapter 70.128 RCW to read as follows:

(1) To effectuate the public policies of this chapter, restrictive covenants may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under this chapter; or

(b) Persons and legal entities from operating adult family homes licensed under this chapter, whether for-profit or nonprofit, to

provide services covered under this chapter. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the restrictive covenant.

(2) This section applies retroactively to all restrictive covenants in effect on the effective date of this section. Any provision in a restrictive covenant in effect on or after the effective date of this section that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict.

**NEW SECTION. Sec. 4.** A new section is added to chapter 64.38 RCW to read as follows:

(1) To effectuate the public policy of chapter 70.128 RCW, the governing documents may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under chapter 70.128 RCW; or

(b) Persons and legal entities from operating adult family homes licensed under chapter 70.128 RCW, whether for-profit or nonprofit, to provide services covered under chapter 70.128 RCW. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the governing documents.

(2) This section applies retroactively to any governing documents in effect on the effective date of this section. Any provision in a governing document in effect on or after the effective date of this section that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict.

**NEW SECTION. Sec. 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

On page 1, line 1 of the title, after "homes;" strike the remainder of the title and insert "amending RCW 70.128.040 and 70.128.005; adding a new section to chapter 70.128 RCW; and adding a new section to chapter 64.38 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

## SENATE AMENDMENT TO HOUSE BILL

### MOTION

Representative Ericksen moved that the House concur in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1935.

Representative Ericksen spoke in favor of the motion to concur in the Senate amendment.

Representative Cody spoke against the motion to concur in the Senate amendment.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the motion to concur in the Senate amendment to Engrossed Second Substitute House Bill No. 1935.

### ROLL CALL

The Clerk called the roll on the motion to concur in the Senate amendment to Engrossed Second Substitute House Bill No. 1935 and the motion was not adopted by the following vote: Yeas, 37; Nays, 60; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Chandler, Condotta, Cox, Crouse, Dammeier, DeBolt, Ericksen, Grant-Herriot, Haler, Herrera, Hinkle, Hope, Johnson, Kirby, Klippert, Kretz, Kristiansen, McCune, Morris, Orcutt, Parker, Pearson, Roach, Rodne, Ross, Schmick, Shea, Short, Taylor, Walsh, Warnick and Wood.

Voting nay: Representatives Appleton, Blake, Campbell, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Liias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rolfes, Santos, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, White, Williams and Mr. Speaker.

Excused: Representative Flannigan.

The House did not concur in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1935 and asked the Senate to recede therefrom.

The Speaker assumed the chair.

#### **SIGNED BY THE SPEAKER**

The Speaker signed the following:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1002  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1004  
 SECOND SUBSTITUTE HOUSE BILL NO. 1025  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1033  
     SUBSTITUTE HOUSE BILL NO. 1038  
     HOUSE BILL NO. 1048  
     HOUSE BILL NO. 1050  
 SECOND SUBSTITUTE HOUSE BILL NO. 1052  
     SUBSTITUTE HOUSE BILL NO. 1071  
     HOUSE BILL NO. 1120  
     HOUSE BILL NO. 1199  
     SUBSTITUTE HOUSE BILL NO. 1283  
     SUBSTITUTE HOUSE BILL NO. 1286  
 SECOND SUBSTITUTE HOUSE BILL NO. 1355  
     HOUSE BILL NO. 1361  
     HOUSE BILL NO. 1487  
 SECOND SUBSTITUTE HOUSE BILL NO. 1580  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1664  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1847  
     HOUSE BILL NO. 1888  
 SECOND SUBSTITUTE HOUSE BILL NO. 1938  
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1954  
 ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1961  
     HOUSE BILL NO. 2132  
     HOUSE BILL NO. 2165  
     ENGROSSED HOUSE BILL NO. 2279  
     ENGROSSED HOUSE BILL NO. 2285  
     SUBSTITUTE SENATE BILL NO. 5001  
     SENATE BILL NO. 5028  
     SENATE BILL NO. 5071  
     SENATE BILL NO. 5580  
     SENATE BILL NO. 5599  
     SENATE BILL NO. 5642  
     SENATE BILL NO. 5804  
     SUBSTITUTE SENATE BILL NO. 5881  
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5901

SENATE BILL NO. 5909  
 SENATE BILL NO. 5976  
 SENATE JOINT MEMORIAL NO. 8001

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

There being no objection, the House adjourned until 10:00 a.m., April 20, 2009, the 99th Day of the Regular Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk



