

TWENTY EIGHTH DAY

MORNING SESSION

Senate Chamber, Olympia, Monday, May 23, 2011

The Senate was called to order at 10:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Brown, Ericksen, Hewitt, Murray, Parlette, Shin and Zarelli.

The Sergeant at Arms Color Guard consisting of Senate Legislative Aides Kim Cusick and Krista Winters, presented the Colors. Senator Fraser offered the prayer.

MOTION

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

MOTION

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

MESSAGE FROM THE HOUSE

May 22, 2011

MR. PRESIDENT:

The Speaker has signed:
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5581,
 ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5596,
 SECOND ENGROSSED SENATE BILL NO. 5773,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5927.
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

May 22, 2011

MR. PRESIDENT:

The House has passed:
 SECOND ENGROSSED SENATE BILL NO. 5638,
 SUBSTITUTE SENATE BILL NO. 5912.
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

May 22, 2011

MR. PRESIDENT:

The House receded from its amendment to SENATE BILL NO. 5289 and passed the bill without the House amendment.
 and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

May 22, 2011

MR. PRESIDENT:

The Speaker has signed:
 ENGROSSED HOUSE BILL NO. 1248,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1277,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1354,
 SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1738,
 HOUSE BILL NO. 2070,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 2115.
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

May 22, 2011

MR. PRESIDENT:

The House has passed:
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1346.
 and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

May 22, 2011

MR. PRESIDENT:

The House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1449 and passed the bill as amended by the Senate.
 and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

INTRODUCTION AND FIRST READING OF HOUSE BILLS

ESHB 1346 by House Committee on Ways & Means (originally sponsored by Representative Hunter)

AN ACT Relating to making changes to laws administered by the department of revenue that do not create any new or broaden any existing tax preference as defined in RCW 43.136.021 or increase any person's tax burden; amending RCW 82.04.220, 82.12.040, and 43.06.400; and repealing RCW 82.16.140 and 82.32.570.

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Eide, the measure listed on the Introduction and First Reading report was referred to the Committee on Ways & Means.

PERSONAL PRIVILEGE

Senator Eide: "Before we go at ease I understand that there is a very special, very dynamic, very powerful and may I dare say very handsome man's birthday today and it's the fine gentleman of Lieutenant Governor. Happy Birthday."

SIGNED BY THE PRESIDENT

The President signed:
 ENGROSSED HOUSE BILL 1248,
 ENGROSSED SUBSTITUTE HOUSE BILL 1277,
 ENGROSSED SUBSTITUTE HOUSE BILL 1354,
 SECOND ENGROSSED SECOND SUBSTITUTE HOUSE
 BILL 1738,
 HOUSE BILL 2070,
 ENGROSSED SUBSTITUTE HOUSE BILL 2115.

MOTION

At 10:12 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 1:40 p.m. by President Owen.

MOTION

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

SIGNED BY THE PRESIDENT

The President signed:
 ENGROSSED SECOND SUBSTITUTE SENATE BILL
 NO. 5182,
 SENATE BILL NO. 5289,
 SECOND ENGROSSED SENATE BILL NO. 5638,
 SUBSTITUTE SENATE BILL NO. 5912,
 SENATE BILL NO. 5941,
 SENATE JOINT RESOLUTION NO. 8206.

SECOND READING
 CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9030, Ronald Erickson, as a member of the Board of Trustees, Central Washington University, be confirmed.

Senators Rockefeller and White spoke in favor of passage of the motion.

MOTION

On motion of Senator White, Senator Shin was excused.

APPOINTMENT OF RONALD ERICKSON

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9030, Ronald Erickson as a member of the Board of Trustees, Central Washington University.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9030, Ronald Erickson as a

member of the Board of Trustees, Central Washington University and the appointment was confirmed by the following vote: Yeas, 41; Nays, 0; Absent, 7; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Harper, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom and White

Absent: Senators Brown, Ericksen, Hargrove, Hewitt, Murray, Parlette and Zarelli

Excused: Senator Shin

Gubernatorial Appointment No. 9030, Ronald Erickson, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Central Washington University.

MOTION

On motion of Senator Eide, Senators Brown, Hewitt, Murray, Parlette and Zarelli were excused.

MOTION

On motion of Senator Schoesler, Senator Ericksen was excused.

SECOND READING
 CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9096, Ann Ryherd, as a member of the Lottery Commission, be confirmed.

Senator Rockefeller spoke in favor of the motion.

APPOINTMENT OF ANN RYHERD

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9096, Ann Ryherd as a member of the Lottery Commission.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9096, Ann Ryherd as a member of the Lottery Commission and the appointment was confirmed by the following vote: Yeas, 43; Nays, 0; Absent, 0; Excused, 6.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom and White

Excused: Senators Brown, Hewitt, Murray, Parlette, Shin and Zarelli

Gubernatorial Appointment No. 9096, Ann Ryherd, having received the constitutional majority was declared confirmed as a member of the Lottery Commission.

MOTION

On motion of Senator Delvin, Senator Ericksen was excused.

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MOTION

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

MOTION

On motion of Senator Eide, Senator Kilmer was excused.

MESSAGE FROM THE HOUSE

May 22, 2011

MR. PRESIDENT:

The House has adopted the report of the Conference Committee on SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 5742 and has passed the bill as recommended by the Conference Committee. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Pursuant to Rule 20 of the Joint Rules of the Senate and House of Representatives, on motion of Senator Eide and without objection, the requirement in Rule 20 of the Joint Rules that each house shall have twenty-four hours from the time of proper receipt and distribution to the desks of the members before considering certain reports from a conference committee was suspended.

REPORT OF THE CONFERENCE COMMITTEE
Second Engrossed Substitute Senate Bill No. 5742
May 21, 2011

MR. PRESIDENT:

MR. SPEAKER:

We of your conference committee, to whom was referred Second Engrossed Substitute Senate Bill No. 5742, have had the same under consideration and recommend that all previous amendments not be adopted and that the following striking amendment be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 47.60.530 and 1979 c 27 s 4 are each amended to read as follows:

~~((There is hereby created in the motor vehicle fund)) (1) The Puget Sound ferry operations account ((to the credit of which shall be deposited all moneys directed by law to be deposited therein. All moneys deposited in this account shall be expended pursuant to appropriations only for reimbursement of the motor vehicle fund for any state moneys, other than insurance proceeds, expended therefrom for alternate transportation services instituted as a result of the destruction of the Hood Canal bridge, and)) is created in the motor vehicle fund.~~

(2) The following funds must be deposited into the account:

- (a) All moneys directed by law;
 - (b) All revenues generated from ferry fares; and
 - (c) All revenues generated from commercial advertising, concessions, parking, and leases as allowed under RCW 47.60.140.
- (3) Moneys in the account may be spent only after appropriation.

(4) Expenditures from the account may be used only for the maintenance, administration, and operation of the ((Washington state ferries including the Hood Canal bridge, supplementing as

~~required the revenues available from the)) Washington state ferry system.~~

NEW SECTION. Sec. 2. A new section is added to chapter 47.60 RCW to read as follows:

(1) The capital vessel replacement account is created in the motor vehicle fund. All revenues generated from the vessel replacement surcharge under RCW 47.60.315(7) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the construction or purchase of ferry vessels and to pay the principal and interest on bonds authorized for the construction or purchase of ferry vessels. However, expenditures from the account must first be used to support the construction or purchase, including any applicable financing costs, of a ferry vessel with a carrying capacity of at least one hundred forty-four cars.

(2) The state treasurer may not transfer any moneys from the capital vessel replacement account except to the transportation 2003 account (nickel account) for debt service on bonds issued for the construction of a 144-car class ferry vessel.

Sec. 3. RCW 47.60.315 and 2007 c 512 s 6 are each amended to read as follows:

(1) The commission shall adopt fares and pricing policies by rule, under chapter 34.05 RCW, according to the following schedule:

(a) Each year the department shall provide the commission a report of its review of fares and pricing policies, with recommendations for the revision of fares and pricing policies for the ensuing year;

(b) By September 1st of each year, beginning in 2008, the commission shall adopt by rule fares and pricing policies for the ensuing year.

(2) The commission may adopt by rule fares that are effective for more or less than one year for the purposes of transitioning to the fare schedule in subsection (1) of this section.

(3) The commission may increase ferry fares included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(4) The chief executive officer of the ferry system may authorize the use of promotional, discounted, and special event fares to the general public and commercial enterprises for the purpose of maximizing capacity use and the revenues collected by the ferry system. The department shall report to the commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities.

(5) Fare revenues and other revenues deposited in the Puget Sound ferry operations account created in RCW 47.60.530 may not be used to support the Puget Sound capital construction account created in RCW 47.60.505, unless the support for capital is separately identified in the fare.

(6) The commission may not raise fares until the fare rules contain pricing policies developed under RCW 47.60.290, or September 1, 2009, whichever is later.

(7) The commission shall impose a vessel replacement surcharge of twenty-five cents on every one-way and round-trip ferry fare sold, including multiride and monthly pass fares. This surcharge must be clearly indicated to ferry passengers and drivers and, if possible, on the fare media itself.

Sec. 4. RCW 82.08.0255 and 2007 c 223 s 9 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicle and special fuel if:

(a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is purchased by the Washington state ferry system for use in a state-owned ferry after June 30, 2013; or

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

(f) The fuel is taxable under chapter 82.36 or 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state shall be entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax shall be claimed as a credit or refunded through the tax reports required under RCW 82.38.150.

Sec. 5. RCW 82.12.0256 and 2007 c 223 s 10 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of:

(1) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2); and

(2) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is taxable under chapter 82.36 or 82.38 RCW: PROVIDED, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection (2)(d), and the director of licensing shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue; or

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

(f) The fuel is purchased by the Washington state ferry system for use in a state-owned ferry after June 30, 2013.

Sec. 6. RCW 43.84.092 and 2010 1st sp.s. c 30 s 20, 2010 1st sp.s. c 9 s 7, 2010 c 248 s 6, 2010 c 222 s 5, 2010 c 162 s 6, and 2010 c 145 s 11 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of

financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multiagency permitting team account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public

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facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 7. RCW 47.64.120 and 2010 c 283 s 10 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the employer and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times to negotiate in good faith with respect to wages, hours, working conditions, and insurance, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Except as provided under RCW 47.64.270, the employer is not required to

bargain over health care benefits. Any retirement system or retirement benefits shall not be subject to collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

(3) The employer shall not bargain over the rights of management as identified in RCW 41.80.040.

(4) A collective bargaining agreement may not contain any provision that extends the term of an existing collective bargaining agreement or applicability of items incompatible with this section in an existing collective bargaining agreement.

(5) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

NEW SECTION. Sec. 8. A new section is added to chapter 47.64 RCW to read as follows:

(1) The captain of a Washington state ferry vessel, also known as the master of a vessel or the commanding officer, is the ultimate authority on, manager of, and has responsibility for the entire vessel and its Washington state ferries personnel while it is in service. The captain's responsibilities include, but are not limited to:

(a) Ensuring the safe navigation of the vessel and its crew and passengers;

(b) Following all applicable federal, state, and agency policies and regulations;

(c) Supervising crew in performance, operations, training, security, and environmental protection;

(d) Overseeing all aspects of vessel operations;

(e) Ensuring that the vessel operations and its Washington state ferries personnel satisfy performance expectations set forth by the department; and

(f) Managing vessel arrivals and departures, as well as all other vessel operations while the vessel is in service.

(3) Effective July 1, 2013, the public employment relations commission shall sever from the masters, mates, and pilots bargaining unit all captains. By August 31, 2011, if a majority of the captains in the masters, mates, and pilots bargaining unit indicate by vote that they desire to be included in a newly formed captains-only bargaining unit, the public employment relations commission shall certify a captains-only bargaining unit, to be effective July 1, 2013. For the vote described in this subsection, a union seeking to represent captains does not have to demonstrate a showing of interest to be included on a ballot. Notwithstanding the results of a vote, captains shall remain a part of the masters, mates, and pilots bargaining unit through June 30, 2013.

(4) If a new captains-only bargaining unit is created, the employer and the exclusive bargaining representative for the captains-only bargaining unit must negotiate a collective bargaining agreement exclusive to the captains-only bargaining unit.

(5) Beginning with negotiations covering the 2013-2015 biennium, the employer and the exclusive bargaining representative of the captains-only bargaining unit must negotiate agreements that are consistent with this section.

(6) A collective bargaining agreement may not contain any provision that extends the term of an existing collective bargaining agreement or applicability of items incompatible with this section in an existing collective bargaining agreement.

NEW SECTION. Sec. 9. A new section is added to chapter 47.64 RCW to read as follows:

For the purposes of this section and sections 10 through 15 of this act:

(1) "Management" means an employee at the Washington state ferries who is part of Washington management services or is exempt.

(2) "Performance measure" means measurable standards to be used by the department to evaluate the sufficiency of the services being provided to ferry riders.

(3) "Performance report" means a report that summarizes ferry system performance using the performance measures identified in sections 10 and 11 of this act.

(4) "Performance target" means the desired outcome of a performance measure.

NEW SECTION. Sec. 10. A new section is added to chapter 47.64 RCW to read as follows:

Performance targets must be established by an ad hoc committee with members from and designated by the office of the governor, which must include at least one member from labor. The committee may not consist of more than eleven members. By December 31, 2011, the committee shall present performance targets to the representatives of the legislative transportation committees and the joint transportation committee for review of the performance measures listed under this section. The committee may also develop performance measures in addition to the following:

(1) Safety performance as measured by passenger injuries per one million passenger miles and by injuries per ten thousand revenue service hours that are recordable by standards of the federal occupational safety and health administration and related to standard operating procedures;

(2) Service effectiveness measures including, but not limited to, passenger satisfaction of interactions with ferry employees, cleanliness and comfort of vessels and terminals, and satisfactory response to requests for assistance. Passenger satisfaction must be measured by an evaluation that is created by a contracted market research company and conducted by the Washington state transportation commission as part of the ferry riders' opinion group survey. The Washington state transportation commission shall, to the extent possible, integrate the passenger satisfaction evaluation into the ferry user data survey described in RCW 47.60.286;

(3) Cost-containment measures including, but not limited to, operating cost per passenger mile, operating cost per revenue service mile, discretionary overtime as a percentage of straight time, and gallons of fuel consumed per revenue service mile; and

(4) Maintenance and capital program effectiveness measures including, but not limited to: Project delivery rate as measured by the number of projects completed on time and within the omnibus transportation appropriations act; vessel and terminal design and engineering costs as measured by a percentage of the total capital program, including measurement of the ongoing operating and maintenance costs; and total vessel out-of-service time.

The ad hoc committee described in subsection (1) of this section expires December 31, 2011.

NEW SECTION. Sec. 11. A new section is added to chapter 47.64 RCW to read as follows:

(1) Beginning on October 1, 2011, the department shall report on peak-direction, peak-time, on-time performance by route for all runs except those delayed or canceled due to tidal conditions. On-time is defined as within ten minutes of the scheduled time. Peak-time for the Mukilteo/Clinton, Edmonds/Kingston, Seattle/Bainbridge, Seattle/Bremerton, Fauntleroy/Vashon/Southworth, and Point Defiance/Tahlequah ferry routes means weekdays from 5:00 a.m. to 9:00 a.m. and 3:00 p.m. to 7:00 p.m. Peak-time for the Coupeville (Keystone)/Port Townsend and Anacortes/San Juan Island ferry routes means Fridays from 3:00 p.m. to closing, Saturdays all day, Sundays all day, holidays all day, and Mondays from opening to 12:00 p.m.

(2) The department shall, on a quarterly basis, report Washington state ferry system management's performance as it relates to the performance measure in subsection (1) of this section (a) to the transportation committees of the legislature, (b) on its vessels, (c) at all ferry terminals, and (d) on the department's web site. The statistics must include reasons for any delays over five minutes and any delays over ten minutes from the scheduled time.

(3) The department may not eliminate any ferry route without prior legislative approval.

NEW SECTION. Sec. 12. A new section is added to chapter 47.64 RCW to read as follows:

(1) The office of financial management shall complete a government management and accountability performance report that provides a baseline assessment of current performance on the performance measures identified in sections 10 and 11 of this act using final 2009-2011 data. This report must be presented to the legislature by November 1, 2011, through the attainment report required in RCW 47.01.071(5) and 47.04.280.

(2) By December 31, 2012, and each year thereafter, the office of financial management shall complete a performance report for the prior fiscal year. This report must be reviewed by the joint transportation committee.

(3) Management shall lead implementation of the performance measures in sections 10 and 11 of this act.

NEW SECTION. Sec. 13. A new section is added to chapter 47.64 RCW to read as follows:

If the Washington state ferries does not meet at least eighty percent of the performance target that is set for each performance measure identified in sections 10 and 11 of this act by June 30, 2013, as reported in the December 31, 2013, performance report described in section 12 of this act, the governor, with the consensus of the chairs and ranking minorities of the transportation committees of the legislature, shall appoint a governor's management representative who, within sixty days, shall develop and submit a corrective action plan to achieve the performance targets in sections 10 and 11 of this act within the following twelve months. The plan must be submitted to the governor and the transportation committees of the legislature.

NEW SECTION. Sec. 14. A new section is added to chapter 47.64 RCW to read as follows:

(1) If the Washington state ferries does not meet at least eighty percent of the performance target that is set for each performance measure identified in sections 10 and 11 of this act by June 30, 2013, as reported in the December 31, 2013, performance report described in section 12 of this act, the department must:

(a) Solicit a fixed cost bid for meeting the performance measures in sections 10 and 11 of this act, which must include a request for information or a request for qualifications to identify qualifications necessary and costs associated with privatizing the management functions of the Washington state ferries; and

(b) Present the results of the request for information or request for qualifications to the transportation committees of the legislature and the governor.

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(2) In consultation with the governor's office, the transportation committees of the legislature shall utilize the information provided in subsection (1) of this section to determine whether or not to competitively contract out the management functions of the Washington state ferry system the following biennium.

(3) If the governor and the transportation committees of the legislature opt to competitively contract out the management functions of the Washington state ferry system in the following biennium, the contract must be a fixed cost contract that requires the private management services firm to meet or exceed the performance target for eighty percent of the performance measures under sections 10 and 11 of this act. Based on these performance measures, the contract must provide for incentive or retained payment arrangements as a means of ensuring satisfactory performance of the contract and improved performance of the ferry system over time.

(4) The contract must include a requirement that the firm retain existing and future collective bargaining agreements as negotiated between the state and the employees' labor representatives. The private management services firm may rehire Washington management services employees or exempt employees at the Washington state ferries.

(5) The contract must be for a two-year period. If the private management services firm meets or exceeds the performance measures under sections 10 and 11 of this act, the contract is renewable for an additional two years for a maximum of ten years. After ten years, the department shall implement an invitation for bid process.

(6) Consistent with RCW 41.06.142(3), the contract is not subject to requirements for agencies purchasing services that have been customarily and historically provided by state employees.

NEW SECTION. Sec. 15. A new section is added to chapter 47.64 RCW to read as follows:

The report required in RCW 47.01.071(5) and 47.04.280 must include the performance measures in sections 10 and 11 of this act.

NEW SECTION. Sec. 16. A new section is added to chapter 41.58 RCW to read as follows:

(1) There is created the marine employees' commission within the public employment relations commission. The governor shall appoint the marine employees' commission with the consent of the senate. The marine employees' commission shall consist of three members: One member to be appointed from labor; one member from industry; and one member from the public who has significant knowledge of maritime affairs. The public member is chair of the marine employees' commission. Any member of the marine employees' commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Marine employees' commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the marine employees' commission. Members of the marine employees' commission must be compensated in accordance with RCW 43.03.250 and must receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission under RCW 47.01.061.

(2) The rules of procedure adopted by the public employment relations commission under RCW 41.58.050 apply to state ferry system employees, except that the marine employees' commission shall act in place of the public employment relations commission only for appeals of unfair labor practice complaints, questions concerning representation, and unit clarifications.

(3) In addition to subsection (2) of this section, the marine employees' commission shall perform the duties as provided in RCW 47.64.280.

(4) This section expires June 30, 2013.

Sec. 17. RCW 41.58.050 and 1975 1st ex.s. c 296 s 7 are each amended to read as follows:

The (~~board~~) commission shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as may be necessary to carry out the provisions of this chapter.

Sec. 18. RCW 41.58.060 and 1983 c 15 s 22 are each amended to read as follows:

For any matter concerning the state ferry system and employee relations, collective bargaining, or labor disputes or stoppages, the provisions of this chapter and chapter 47.64 RCW shall govern. However, if a conflict exists between this chapter and chapter 47.64 RCW, this chapter shall govern.

Sec. 19. RCW 47.64.130 and 2010 c 8 s 10021 are each amended to read as follows:

(1) It is an unfair labor practice for the employer or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. However, subject to rules made by the public employment relations commission pursuant to RCW (~~47.64.280~~) 41.58.050, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160. However, nothing prohibits the employer from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter. However, this subsection does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer.

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit.

Sec. 20. RCW 47.64.280 and 2010 c 283 s 14 are each amended to read as follows:

(1) (~~There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and~~

~~one member from the public who has significant knowledge of maritime affairs. The public member shall be chair of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.~~

~~(2)) The marine employees' commission, created in section 16 of this act, shall ~~(a)~~ adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in RCW 47.64.150 ~~(b)~~ provide for impasse mediation as required in RCW 47.64.210; and ~~(c)~~ perform those duties required in RCW 47.64.300.~~

~~(3)(a) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.~~

~~(b) The parties are entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department.~~

~~(c) The commission shall adopt rules of procedure under chapter 34.05 RCW.~~

~~(d) The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter).~~

(2) All unfair labor practice complaints, questions concerning representation, and unit clarifications must be filed with the public employment relations commission and processed in accordance with the commission's rules adopted under RCW 41.58.050, except that the marine employees' commission shall act in place of the public employment relations commission only for appeals.

(3) This section expires June 30, 2013.

Sec. 21. RCW 47.64.300 and 2007 c 160 s 4 are each amended to read as follows:

(1) If an agreement has not been reached following a reasonable period of negotiations and, when applicable, mediation, upon the recommendation of the assigned mediator that the parties remain at impasse or, with respect to biennial bargaining, in compliance with the interest arbitration agreement under RCW 47.64.170(6)(a), all impasse items shall be submitted to arbitration under this section. The issues for arbitration shall be limited to the issues certified by the ~~(commission))~~ executive director.

(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be the same as those of an arbitration panel. If the parties cannot agree on the arbitrator within five working days, the selection shall be made under subsection (3) of this section, except with respect to biennial bargaining described under RCW 47.64.170(6). The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

(3) Within seven days following the issuance of the determination of the ~~(commission))~~ executive director, each party shall, absent an agreement to the contrary, name one person to serve as its arbitrator on the arbitration panel. Except with respect to biennial bargaining described under RCW 47.64.170(6), the two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, either party may apply to the federal mediation and conciliation service, or, with the consent of the parties, the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

(4) In consultation with the parties, the arbitrator or arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. The parties shall exchange final positions in writing, with copies to the arbitrator or arbitration panel, with respect to every issue to be arbitrated, on a date mutually agreed upon, but in no event later than ten working days before the date set for hearing. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof.

(5) The neutral chair shall consult with the other members of the arbitration panel, if a panel has been created. Within thirty days following the conclusion of the hearing, or sooner as the October 1st deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination is final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

Sec. 22. RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and 2010 c 1 s 1 are each reenacted and amended to read as follows:

(1) The provisions of this chapter do not apply to:

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(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

(k) Commissioned and enlisted personnel in the military service of the state;

(l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;

(m) The public printer or to any employees of or positions in the state printing plant;

(n) Officers and employees of the Washington state fruit commission;

(o) Officers and employees of the Washington apple commission;

(p) Officers and employees of the Washington state dairy products commission;

(q) Officers and employees of the Washington tree fruit research commission;

(r) Officers and employees of the Washington state beef commission;

(s) Officers and employees of the Washington grain commission;

(t) Officers and employees of any commission formed under chapter 15.66 RCW;

(u) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(v) Officers and employees of the nonprofit corporation formed under chapter 67.40 RCW;

(w) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(x) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(y) ~~((All employees of the marine employees' commission; —(z)))~~ Staff employed by the department of commerce to administer energy policy functions;

~~((aa))~~ (z) The manager of the energy facility site evaluation council;

~~((bb))~~ (aa) A maximum of ten staff employed by the department of commerce to administer innovation and policy functions, including the three principal policy assistants exempted under (x) of this subsection;

~~((cc))~~ (bb) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(c) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the director of personnel may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the director of personnel stating the reasons for requesting such exemptions. The director of personnel shall hold a public hearing after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which

exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the director of personnel shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (v) (~~and (y)~~) and (2) of this section, shall be determined by the director of personnel. Changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

From February 18, 2009, through June 30, 2011, a salary or wage increase shall not be granted to any position exempt from classification under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW, or negotiated by the nonprofit corporation formed under chapter 67.40 RCW, and except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources; and

(b) The salary increase will not adversely impact the provision of client services.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position exempt from classification under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

From February 15, 2010, until June 30, 2011, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

NEW SECTION. Sec. 23. (1) Consistent with section 16 of this act, the marine employees' commission's powers, duties, and

functions are transferred to the public employment relations commission.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the marine employees' commission shall be delivered to the custody of the public employment relations commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the marine employees' commission shall be made available to the public employment relations commission. All funds, credits, or other assets held by the marine employees' commission shall be assigned to the public employment relations commission.

(b) Any appropriations made to the marine employees' commission shall, on the effective date of this section, be transferred and credited to the public employment relations commission.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All pending business before the marine employees' commission shall be continued and acted upon by the public employment relations commission. All existing contracts and obligations shall remain in full force and shall be performed by the public employment relations commission.

(4) The transfer of the powers, duties, and functions of the marine employees' commission shall not affect the validity of any act performed before the effective date of this section.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

Sec. 24. RCW 47.64.011 and 2006 c 164 s 1 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

(1) "Collective bargaining representative" means the persons designated by the governor and employee organizations to be the exclusive representatives during collective bargaining negotiations.

(2) "Commission" means the (~~marine employees'~~) public employment relations commission created in RCW (~~47.64.280~~) 41.58.010.

(3) "Department of transportation" means the department as defined in RCW 47.01.021.

(4) "Employer" means the state of Washington.

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

(6) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(~~(6)~~) (7) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(~~(7)~~) (8) "Lockout" means the refusal of the employer to furnish work to ferry employees in an effort to get ferry employee organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage shall not be considered a lockout.

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((8)) (9) "Office of financial management" means the office as created in RCW 43.41.050.

((9)) (10) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her willful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter.

Sec. 25. RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are each reenacted and amended to read as follows:

(1) Except as provided in RCW 47.60.656 and subsections (2) and (4) of this section, or as provided in RCW 36.54.130 and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the ((marine employees')) commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) If a public transportation benefit area meeting the requirements of RCW 36.57A.200 has voter approval to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase passenger-only vessels, related equipment, or terminal space for purposes of loading and unloading the passenger-only ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A benefit area or subcontractor of that benefit area that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(3) If a ferry district is formed under RCW 36.54.110 to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district

that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Unless otherwise prohibited by federal or state law, a requirement that the ferry district and any contract with its subcontractors, give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Unless otherwise prohibited by federal or state law, a requirement that the ferry district and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(4) The department of transportation shall make its terminal, dock, and pier space available to private operators of passenger-only ferries if the space can be made available without limiting the operation of car ferries operated by the department. These private operators are not bound by the provisions of subsection (1) of this section. Charges for the equipment and space must be fair market value taking into account the public benefit derived from the passenger-only ferry service.

NEW SECTION. Sec. 26. A new section is added to chapter 47.64 RCW to read as follows:

(1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders; however, a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief.

NEW SECTION. Sec. 27. A new section is added to chapter 47.64 RCW to read as follows:

(1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections. The commission shall adopt rules that provide for at least the following:

- (a) Secret balloting;
- (b) Consulting with employee organizations;
- (c) Access to lists of employees, job classification, work locations, and home mailing addresses;
- (d) Absentee voting;
- (e) Procedures for the greatest possible participation in voting;
- (f) Campaigning on the employer's property during working hours; and
- (g) Election observers.

(2) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit.

(3) The certified exclusive bargaining representative is responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if:

(a) Fewer than twelve months have elapsed since the last certification or election; or

(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days and no less than ninety calendar days before the expiration of the contract.

NEW SECTION. Sec. 28. The following acts or parts of acts are each repealed:

(1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 & 1961 c 13 s 47.64.080; and

(2) RCW 47.64.150 (Grievance procedures) and 1983 c 15 s 6.

NEW SECTION. Sec. 29. 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. 30. Sections 1 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION. Sec. 31. Sections 16 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011.

NEW SECTION. Sec. 32. Sections 26 through 28 of this act take effect July 1, 2013."

Correct the title.

And the bill do pass as recommended by the conference committee.

Signed by Senators Haugen, King and Prentice; Representatives Clibborn, Hargrove and Reykdal.

MOTION

Senator Haugen moved that the Report of the Conference Committee on Second Engrossed Substitute Senate Bill No. 5742 be adopted.

Senators Haugen, King and Eide spoke in favor of the motion.

MOTION

At 2:00 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

EVENING SESSION

The Senate was called to order at 5:30 p.m. by President Owen.

MOTION

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

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Hobbs moved that Gubernatorial Appointment No. 9103, James Shipman, as a member of the Board of Trustees, Everett Community College District No. 5, be confirmed.

Senator Hobbs spoke in favor of the motion.

MOTION

On motion of Senator White, Senators Kilmer and Prentice were excused.

MOTION

On motion of Senator Fain, Senators Delvin, Ericksen and Parlette were excused.

APPOINTMENT OF JAMES SHIPMAN

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9103, James Shipman as a member of the Board of Trustees, Everett Community College District No. 5.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9103, James Shipman as a member of the Board of Trustees, Everett Community College District No. 5 and the appointment was confirmed by the following vote: Yeas, 43; Nays, 0; Absent, 3; Excused, 3.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist, Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Pridemore, Ranker, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Absent: Senators Hargrove, Kline and Regala

Excused: Senators Ericksen, Prentice and Shin

Gubernatorial Appointment No. 9103, James Shipman, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Everett Community College District No. 5.

MOTION

On motion of Senator Eide, Senators Kline and Regala were excused.

MOTION

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

The President declared the question before the Senate to be the motion by Senator Haugen that the Report of the Conference Committee on Second Engrossed Substitute Senate Bill No. 5742 be adopted.

Senators Haugen and King spoke in favor of the motion.

The motion by Senator Haugen carried and the Report of the Conference Committee was adopted by voice vote.

The President declared the question before the Senate to be the final passage of Second Engrossed Substitute Senate Bill No. 5742, as recommended by the Conference Committee.

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ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Substitute Senate Bill No. 5742, as recommended by the Conference Committee, and the bill passed the Senate by the following vote: Yeas, 36; Nays, 9; Absent, 0; Excused, 4.

Voting yea: Senators Baumgartner, Becker, Brown, Chase, Conway, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pridemore, Ranker, Rockefeller, Schoesler, Sheldon, Swecker, Tom, White and Zarelli

Voting nay: Senators Baxter, Benton, Carrell, Delvin, Ericksen, Holmquist Newbry, Pflug, Roach and Stevens

Excused: Senators Kline, Prentice, Regala and Shin

SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 5742, as recommended by the Conference Committee, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MESSAGE FROM THE HOUSE

May 23, 2011

MR. PRESIDENT:

The House has passed:

ENGROSSED HOUSE BILL NO. 2123,

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

May 23, 2011

MR. PRESIDENT:

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

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1371,

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1965.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

SUPPLEMENTAL INTRODUCTION AND FIRST READING OF HOUSE BILLS

EHB 2123 by Representatives Green and Condotta

AN ACT Relating to stabilizing workers' compensation premium rates and claim costs through the limited means of creating the stay-at-work program, suspending cost-of-living adjustments for fiscal year 2012 with no catch-up and delaying the initial adjustment, allowing claim resolution structured settlements for injured workers age fifty-five and older effective 2012, fifty-three and older effective 2015, and fifty and older effective 2016, adjusting pension benefits for

prior permanent partial disability awards, eliminating the interest on permanent partial disability award schedules, providing safety and health investment grants, creating the industrial insurance rainy day fund, directing the department of labor and industries to increase its employer, worker, and provider fraud prevention efforts, requiring a performance audit by the joint legislative audit and review committee of workers' compensation claims management in the workers' compensation system to include self-insured claims, and studying occupational disease claims in the workers' compensation system; amending RCW 51.32.072, 51.32.075, 51.52.120, 51.32.080, 51.04.110, 51.44.100, and 43.79A.040; reenacting and amending RCW 51.32.090; adding new sections to chapter 51.04 RCW; adding a new section to chapter 49.17 RCW; adding a new section to chapter 51.44 RCW; creating new sections; providing an expiration date; and declaring an emergency.

MOTION

On motion of Senator Eide, and without objection, Engrossed House Bill No. 2123 was placed on the second reading calendar under suspension of the rules.

MOTION

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

MESSAGE FROM THE HOUSE

May 22, 2011

MR. PRESIDENT:

The House passed SECOND ENGROSSED SENATE BILL NO. 5764 with the following amendment(s): 5764.E2 AMH WAYS H2823.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) Innovate Washington is hereby created as a state agency exercising public and essential governmental functions. Innovate Washington is created as the successor to the Washington technology center and the Spokane intercollegiate research and technology institute. Innovate Washington is created to be a collaborative effort between the state's public and private institutions of higher education, private industry, and government and is to be the primary agency focused on growing the innovation-based economic sectors of the state and responding to the technology transfer needs of existing businesses in the state.

(2) The mission of innovate Washington is to make Washington the best place to develop, build, and deploy innovative products, services, and solutions to serve the world. To carry out this mission, innovate Washington is to: Develop and strengthen academic-industry relationships through research and assistance that is primarily of interest to existing small and medium-sized Washington-based companies; facilitate company growth through early stage financing; and leverage state investments in sector-focused, innovation-based economic development initiatives consistent with the state's economic development strategic plan and export strategy. As funds are available, innovate Washington shall:

(a) Facilitate leading edge collaborative research and technology transfer opportunities to existing state businesses directly and by working with industry associations and innovation partnership zones;

(b) Coordinate its activities with the commercialization and technology transfer activities of the state's research institutions to facilitate research that supports and develops state industries;

(c) Provide methods, systems, and venues for effective interaction and collaboration between the state's technology-based industries and its institutions of higher education;

(d) Provide assistance and support to businesses in:

(i) Securing federal and private funds to support product research and commercialization;

(ii) Developing and integrating technology in new or enhanced products and services; and

(iii) Launching those products and services in sustainable businesses in the state;

(e) Establish programmatic activities that, through partnerships with the private sector, increase the competitiveness of state industries. This may include support provided to firms in innovation partnership zones established under RCW 43.330.270;

(f) Provide opportunities for training undergraduate and graduate students in technology transfer and commercialization processes through direct involvement in research and industry interactions;

(g) Work with regional public and private utilities, district energy providers, the utilities and transportation commission, and the state energy office to improve the alignment of investments in clean energy technologies with existing state policies. This may include facilitating public-private partnerships to encourage research and development of emerging clean and renewable energy technologies;

(h) Serve as the lead entity in the state for coordinating clean energy-related initiatives and establishing a long-term funding strategy for programs targeted at expanding the clean energy sector, while maintaining existing energy policy and regulatory functions at the department of commerce within the state energy office;

(i) Administer technology and innovation grant and loan programs including bridge funding programs for the state's technology sector;

(j) Emphasize and develop nonstate support of program activities; and

(k) Facilitate public-private partnerships that support the growth of strategic, innovation-based sectors.

(3)(a) Administrative responsibilities for the Washington technology center facilities located on the University of Washington Seattle campus and the Spokane intercollegiate research and technology institute facilities located on the Riverpoint campus operated by Washington State University Spokane are hereby transferred to innovate Washington except to the extent that such responsibilities are the subject of an interagency agreement between the University of Washington and the Washington technology center, in which case the terms of that agreement control. The facilities shall be used for purposes consistent with the obligations of innovate Washington under this chapter. As initially established, the University of Washington and Washington State University shall continue to provide the facility support and maintenance for these facilities as required by innovate Washington, except to the extent that such responsibilities are the subject of an interagency agreement between the University of Washington and the Washington technology center, in which case the terms of that agreement control. Other institutions of higher education may provide facility support and maintenance subsequently.

(b) The University of Washington, Washington State University, and other institutions of higher education participating in innovate Washington programs shall provide the affiliated staff and faculty participating in these programs at their own expense.

(4) The facilities of innovate Washington may be made available to any research institution or any public institution of

higher education within the state when this would benefit specific program needs consistent with this chapter.

(5) Innovate Washington shall, by December 1, 2012, develop a five-year business plan that must be updated by December 1st of every even-numbered year and submitted to the appropriate committees of the legislature. The plan must include:

(a) A plan for operating additional facilities in Vancouver, the Tri-Cities, Bellingham, and such other locations as the innovate Washington board identifies as appropriate;

(b) Identification and specification of activities to be undertaken by those operating each of innovate Washington's facilities to include potential collaboration with innovative programs at the state's community and technical colleges and methods of working with the centers of excellence established under RCW 28B.50.902 to identify businesses that could benefit from innovate Washington services;

(c) The process to be followed, developed in collaboration with impact Washington or any successor manufacturing extension partnership program operating in the state, to ensure that impact Washington clients have ready access to innovate Washington's services when appropriate and that companies being assisted by innovate Washington have ready access to impact Washington's services; and

(d) Mechanisms for outreach to firms operating in the state's innovation partnership zones established under RCW 43.330.270 to ensure such firms benefit from innovate Washington services.

(6) The five-year business plan required under this section must include a clean energy component that includes:

(a) A strategy for implementation of the first three market-driving initiatives identified by the clean energy leadership council in its 2010 report. These market-driving initiatives are in the areas of:

(i) Combined energy efficiency, green buildings, and smart grid;

(ii) Renewable energy resource optimization and smart grid deployment; and

(iii) Bioenergy deployment acceleration.

(b) Recommendations on ways to improve policy alignment, streamline regulatory requirements, and remove administrative barriers that limit the growth of the clean energy sector in Washington.

(7) For the purposes of this section, "lead entity" means the organization that all other state agencies must coordinate with and receive approval from in order to award state funds in support of clean energy initiatives.

NEW SECTION. Sec. 2. (1) The powers of innovate Washington are vested in and shall be exercised by a board of directors consisting of:

(a) The governor of the state of Washington or the governor's designee;

(b)(i) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(ii) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(c) The president of the University of Washington or the president's designee;

(d) The president of Washington State University or the president's designee;

(e) The director of the department of commerce or the director's designee;

(f) The chairs of the sector advisory committees created under this chapter shall serve as ex officio voting members; and

(g) Seven members appointed by the governor from among individuals who own or are executives at technology-based and innovative firms in the state; of these members, at least four must be

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from firms manufacturing in the state. The term of office for each board member appointed by the governor shall be three years except, of the initial appointees, three shall be appointed for one year and three shall be appointed for two years. Members of the board may be appointed for additional terms.

(2) The board shall meet at least biannually. The initial meeting of the board must occur before December 31, 2011.

(3) A board member may be removed by the governor for cause under RCW 43.06.070 and 43.06.080. The governor must fill any vacancy on the board by appointment for the remainder of the unexpired term.

(4)(a) The appointed members of the board shall be compensated in accordance with RCW 43.03.240 and may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 43.03.050 and 43.03.060.

(b) The ex officio members of the board under subsection (1)(a) and (c) through (g) of this section may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 43.03.050 and 43.03.060.

(c) Legislative members of the board may be reimbursed for expenses incurred in the discharge of their duties under this chapter pursuant to RCW 44.04.120.

(5) A majority of currently serving board members constitutes a quorum.

(6) Meetings of the board shall be held in accordance with the open public meetings act, chapter 42.30 RCW, and at the call of the chair or when a majority of the board members so requests. Meetings of the board may be held at any location within or out of the state, and board members may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200.

(7) The innovate Washington board must:

(a) Develop operating policies for innovate Washington programs;

(b) Appoint, and perform an annual performance review of, an executive director;

(c) Approve an annual operating budget and ensure adequate funding for operations;

(d) Approve a five-year business plan and its updates;

(e) Perform the duties required under chapter 70.210 RCW relating to the investing in innovation program;

(f) Convene representatives of the commercialization and technology transfer offices of private and public research institutions in the state to determine the best methods for:

(i) Integrating existing databases into a single database of in-state technologies and inventions;

(ii) Making the technologies in the integrated database accessible; and

(iii) Promoting the integrated database to entrepreneurs and investors for commercialization and licensing purposes;

(g) Set performance goals for each program or service established; and

(h) Provide a report to the governor and the legislature detailing the fund-raising activities and outcomes, operations, economic impact, and performance of innovate Washington. The report is due by December 1st of every year and the first report is due by December 1, 2012. The report must include measures related to customer satisfaction as well as measures of results derived from assistance provided to businesses, including but not limited to manufacturing facilities established in Washington, job creation inside and outside of Washington, new product development, new markets opened and other export measures, the adoption of new production processes, revenue and sales growth, measures that would be included in a balanced scorecard, and such other outcome-based measures as the board determines is appropriate.

(8) The board may:

(a) Make and execute agreements, contracts, and other instruments with any private, public, or nonprofit entity for the performance, operation, administration, implementation, or advancement of any program in accordance with this chapter;

(b) Employ, contract with, or engage staff, advisors, auditors, other technical or professional assistants, and such other personnel as are necessary or desirable to implement this chapter. Staff support for innovate Washington programs may be provided through cooperative agreements with any public or private institution of higher education;

(c) Solicit and receive gifts, grants, donations, sponsorships, or contributions from any federal, state, or local governmental agency or program or any private source, and expend the same for any purpose consistent with this chapter;

(d) Establish such:

(i) Affiliated organizations, that may not be considered state agencies as defined under chapter 43.88 RCW, to facilitate partnerships and program delivery with the private sector;

(ii) Special funds consistent with the provisions of chapter 43.88 RCW; and

(iii) Controls as it finds convenient for the implementation of this chapter;

(e) Create one or more advisory committees;

(f) Adopt rules consistent with this chapter;

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

(h) Exercise any other power reasonably required to implement the purposes of this chapter.

NEW SECTION. Sec. 3. (1) To increase participation by Washington state small business innovators in federal small business research programs, innovate Washington shall provide or contract for the provision of a small business innovation assistance program. The program must include a proposal review process and must train and assist Washington small business innovators to win awards from federal small business research programs. The program must collaborate with small business development centers, entrepreneur-in-residence programs, and other appropriate sources of technical assistance to ensure that small business innovators also receive the planning, counseling, and support services necessary to expand their businesses and protect their intellectual property.

(2) In operating the program, innovate Washington must give priority to first-time applicants to the federal small business research programs, new businesses, and firms with fewer than ten employees, and may charge a fee for its services.

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

(a) "Federal small business research programs" means the programs, operating pursuant to the small business innovation development act of 1982, P.L. 97-219, and the small business technology transfer act of 1992, P.L. 102-564, title II, that provide funds to small businesses to conduct research having commercial application.

(b) "Small business" means a corporation, partnership, sole proprietorship, or individual, operating a business for profit, with two hundred fifty employees or fewer, including employees employed in a subsidiary or affiliated corporation, that otherwise meets the requirements of federal small business research programs.

NEW SECTION. Sec. 4. The investing in innovation account is created in the custody of the state treasurer to receive state and federal funds, grants, private gifts, or contributions to further the purpose of innovate Washington. Expenditures from the account may be used only for the purposes of the investing in innovation programs established in chapter 70.210 RCW and any other purpose consistent with this chapter. Only the executive director of

innovate Washington or the executive director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 5. A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions in RCW 41.06.070, this chapter does not apply to any position in or employee of innovate Washington under chapter 43--- RCW (the new chapter created in section 20 of this act).

Sec. 6. RCW 28B.50.902 and 2009 c 151 s 4 are each amended to read as follows:

(1) The college board, in consultation with business, industry, labor, the workforce training and education coordinating board, the department of ((community, trade, and economic development)) commerce, the employment security department, and community and technical colleges, shall designate centers of excellence and allocate funds to existing and new centers of excellence based on a competitive basis.

(2) Eligible applicants for the program established under this section include community and technical colleges. Priority shall be given to applicants that have an established education and training program serving the targeted industry and that have in their home district or region an industry cluster with the same targeted industry at its core.

(3) It is the role of centers of excellence to employ strategies to:

(a) Create educational efficiencies;

(b) Build a diverse, competitive workforce for strategic industries;

(c) Maintain an institutional reputation for innovation and responsiveness;

(d) Develop innovative curriculum and means of delivering education and training;

(e) Act as brokers of information and resources related to community and technical college education and training ((for)) and assistance available for firms in a targeted industry, including working with innovate Washington to develop methods to identify businesses within a targeted industry that could benefit from the services offered by innovate Washington under chapter 43--- RCW (the new chapter created in section 20 of this act); and

(f) Serve as partners with workforce development councils, associate development organizations, and other workforce and economic development organizations.

(4) Examples of strategies under subsection (3) of this section include but are not limited to: Sharing curriculum and other instructional resources, to ensure cost savings to the system; delivering collaborative certificate and degree programs; and holding statewide summits, seminars, conferences, and workshops on industry trends and best practices in community and technical college education and training.

Sec. 7. RCW 70.210.010 and 2003 c 403 s 1 are each amended to read as follows:

It is the intent of the legislature to promote growth in the technology sectors of our state's economy and to particularly focus support on the ((creation and)) commercialization of intellectual property ((in the technology, energy, and telecommunications industries)) and the manufacture of innovative products in the state.

Sec. 8. RCW 70.210.020 and 2003 c 403 s 2 are each amended to read as follows:

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

(1) ("Center" means the Washington technology center established under RCW 28B.20.283 through 28B.20.295.

—(2)) "Board" means the innovate Washington board of directors ((for the center)).

(3) "Innovate Washington" means the agency created in section 1 of this act.

Sec. 9. RCW 70.210.030 and 2003 c 403 s 4 are each amended to read as follows:

(1) The investing in innovation ((grants)) program is established.

(2) ((The center)) Innovate Washington shall periodically make strategic assessments of the types of ((state)) investments in research ((and)), technology, and industrial development in this state that would likely create new products, jobs, and business opportunities and produce the most beneficial long-term improvements to the lives and health of the citizens of the state. The assessments shall be available to the public and shall be used to guide decisions on awarding ((grants)) funds under this chapter.

Sec. 10. RCW 70.210.040 and 2003 c 403 s 5 are each amended to read as follows:

The board shall:

(1) Develop criteria for the awarding of loans or grants to qualifying universities, institutions, businesses, or individuals;

(2) Make decisions regarding distribution of ((grant)) funds ((and make grant awards)); ((and))

(3) In making ((grant awards, seek to provide a balance between research grant awards and commercialization grant awards)) funding decisions and to the extent that economic impact is not diminished, provide priority to enterprises that:

(a) Were created through, and have existing intellectual property agreements in place with, public and private research institutions in the state; and

(b) Intend to produce new products or services, develop or expand facilities, or manufacture in the state; and

(4) Specify in contracts awarding funds that recipients must utilize funding received to support operations in the state of Washington and must subsequently report on the impact of their research, development, and any subsequent production activities within Washington for a period of ten years following the award of funds, and that a failure to comply with this requirement will obligate the recipient to return the amount of the award plus interest as determined by the board.

Sec. 11. RCW 70.210.050 and 2003 c 403 s 6 are each amended to read as follows:

(1) The board may accept grant and loan proposals and establish a competitive process for the awarding of grants and loans.

(2) The board shall establish a peer review committee to include board members, scientists, engineers, and individuals with specific recognized expertise. The peer review committee shall provide to the board an independent peer review of all proposals determined to be competitive for a loan or grant award that are submitted to the board.

(3) In the awarding of grants and loans, priority shall be given to proposals that leverage additional private and public funding resources.

(4) ((Up to fifty percent of available funds from the investing in innovation account may be used to support commercialization opportunities for research in Washington state through an organization with commercialization expertise such as the Spokane intercollegiate research and technology institute.

—(5) The center)) Innovate Washington may not be a direct recipient of ((grant awards)) funding under this chapter ((403, Laws of 2003))

Sec. 12. RCW 70.210.060 and 2003 c 403 s 7 are each amended to read as follows:

The board shall establish performance benchmarks against which the program will be evaluated. The ((grants)) program shall be reviewed periodically by the board. The board shall report annually to the appropriate standing committees of the legislature on loans made and grants awarded and as appropriate on program reviews conducted by the board.

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Sec. 13. RCW 70.210.070 and 2003 c 403 s 8 are each amended to read as follows:

(1) ~~(The center)~~ Innovate Washington shall administer the investing in innovation ~~(grants)~~ program.

(2) Not more than one percent of the available funds from the investing in innovation account may be used for administrative costs of the program.

Sec. 14. RCW 42.30.110 and 2010 1st sp.s. c 33 s 5 are each amended to read as follows:

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the

litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To consider in the case of innovate Washington, the substance of grant or loan applications and grant or loan awards if public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

Sec. 15. RCW 42.56.270 and 2009 c 394 s 3 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure

would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of ~~((community, trade, and economic development))~~ commerce:

(i) Financial and proprietary information collected from any person and provided to the department of ~~((community, trade, and economic development))~~ commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of ~~((community, trade, and economic development))~~ commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of ~~((community, trade, and economic development))~~ commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of ~~((community, trade, and economic development))~~ commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such

information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business; ~~((and))~~

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information; and

(21) Financial, commercial, operations, and technical and research information and data submitted to or obtained by innovate Washington in applications for, or delivery of, grants and loans under chapter 43--- RCW (the new chapter created in section 20 of this act), to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.

NEW SECTION. Sec. 16. The following acts or parts of acts are each repealed:

(1) RCW 28B.20.283 (Washington technology center--Findings) and 1995 c 399 s 25 & 1992 c 142 s 1;

(2) RCW 28B.20.285 (Washington technology center--Created--Purpose) and 2004 c 151 s 3, 2003 c 403 s 10, 1992 c 142 s 3, & 1983 1st ex.s. c 72 s 11;

(3) RCW 28B.20.287 (Washington technology center--Definitions) and 2004 c 151 s 4 & 1992 c 142 s 2;

(4) RCW 28B.20.289 (Washington technology center--Administration-- Board of directors) and 2003 c 403 s 11, 1995 c 399 s 26, & 1992 c 142 s 4;

(5) RCW 28B.20.291 (Washington technology center--Support from participating institutions) and 1992 c 142 s 5;

(6) RCW 28B.20.293 (Washington technology center--Role of department of community, trade, and economic development) and 1995 c 399 s 27 & 1992 c 142 s 6;

(7) RCW 28B.20.295 (Washington technology center--Availability of facilities to other institutions) and 1992 c 142 s 7;

(8) RCW 28B.20.296 (Washington technology center--Renewable energy and energy efficiency business development--Strategic plan) and 2004 c 151 s 2;

(9) RCW 28B.20.297 (Washington technology center--Small business innovation research assistance program) and 2005 c 357 s 1;

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(10) RCW 28B.38.010 (Spokane intercollegiate research and technology institute) and 2004 c 275 s 55 & 1998 c 344 s 9;

(11) RCW 28B.38.020 (Administration--Board of directors--Powers and duties) and 1998 c 344 s 10;

(12) RCW 28B.38.030 (Support from participating institutions) and 1998 c 344 s 11;

(13) RCW 28B.38.040 (Operating staff--Cooperative agreements for programs and research) and 1998 c 344 s 12;

(14) RCW 28B.38.050 (Role of department of community, trade, and economic development) and 1998 c 344 s 13;

(15) RCW 28B.38.060 (Availability of facilities to other institutions) and 1998 c 344 s 14;

(16) RCW 28B.38.070 (Authority to receive and expend funds) and 1998 c 344 s 15; and

(17) RCW 28B.38.900 (Captions not law) and 1998 c 344 s 16.

NEW SECTION. Sec. 17. (1) The Spokane intercollegiate research and technology institute and the Washington technology center are hereby abolished and the powers, duties, and functions are hereby transferred to innovate Washington. Once the board created in section 2 of this act has convened, all references to the Spokane intercollegiate research and technology institute or the Washington technology center in the Revised Code of Washington shall be construed to mean innovate Washington.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the Spokane intercollegiate research and technology institute or the Washington technology center shall be delivered to the custody of innovate Washington. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the Spokane intercollegiate research and technology institute or the Washington technology center shall be made available to innovate Washington. All funds, credits, or other assets held by the Spokane intercollegiate research and technology institute or the Washington technology center shall be assigned to innovate Washington.

(b) Any appropriations made to the Spokane intercollegiate research and technology institute or the Washington technology center shall, on the effective date of this section, be transferred and credited to innovate Washington.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the Spokane intercollegiate research and technology institute or the Washington technology center are transferred to the jurisdiction of innovate Washington. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to innovate Washington to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the Spokane intercollegiate research and technology institute or the Washington technology center shall be continued and acted upon by innovate Washington. All existing contracts and obligations shall remain in full force and shall be performed by innovate Washington.

(5) The transfer of the powers, duties, functions, and personnel of the Spokane intercollegiate research and technology institute and the Washington technology center shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these

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shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the Spokane intercollegiate research and technology institute or the Washington technology center assigned to innovate Washington under this section whose positions are within an existing bargaining unit description at innovate Washington shall become a part of the existing bargaining unit at innovate Washington and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW.

NEW SECTION. Sec. 18. The joint legislative audit and review committee shall review the performance of innovate Washington as provided in this act and make recommendations to the appropriate policy and fiscal committees of the legislature by December 1, 2015, regarding the effectiveness of innovate Washington programs. The review shall consider each aspect of the innovate Washington balanced scorecard as adopted by the innovate Washington board under section 2(7)(h) of this act and any other measures of performance deemed relevant by the joint legislative audit and review committee.

NEW SECTION. Sec. 19. RCW 70.210.070 is recodified as a section in chapter 43.-- RCW (the new chapter created in section 20 of this act).

NEW SECTION. Sec. 20. Sections 1 through 4, 17, and 18 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 21. This act takes effect August 1, 2011."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Kastama moved that the Senate concur in the House amendment(s) to Second Engrossed Senate Bill No. 5764.

Senator Kastama spoke in favor of the motion.

POINT OF INQUIRY

Senator Rockefeller: "Would Senator Kastama yield to a question? Senator Kastama, section one of the bill as amended defines 'lead entity' to mean an 'organization that all other state agencies must coordinate with and receive approval from in order to award state funds in support clean energy initiatives. Does this all awards dealing with clean energy must be approved by the lead entity?'"

Senator Kastama: "Thank you for that question Senator Rockefeller. Section one is intended to apply to new clean energy initiatives targeted at growing the clean energy sector."

Senator Baumgartner spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kastama that the Senate concur in the House amendment(s) to Second Engrossed Senate Bill No. 5764.

The motion by Senator Kastama carried and the Senate concurred in the House amendment(s) to Second Engrossed Senate Bill No. 5764 by voice vote.

The President declared the question before the Senate to be the final passage of Second Engrossed Senate Bill No. 5764, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Senate Bill No. 5764, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senators Ericksen and Pflug

Excused: Senators Prentice and Shin

SECOND ENGROSSED SENATE BILL NO. 5764, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 5:54 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 7:13 p.m. by President Owen.

MOTION

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

REPORTS OF STANDING COMMITTEES

May 23, 2011

SB 5860 Prime Sponsor, Senator Murray: Addressing state government employee compensation. Reported by Committee on Ways & Means

MAJORITY recommendation: That Substitute Senate Bill No. 5860 be substituted therefor, and the substitute bill do pass. Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli; Brown; Conway; Hewitt; Honeyford; Kastama; Keiser; Kohl-Welles; Pflug; Regala; Rockefeller; Schoesler and Tom.

Passed to Committee on Rules for second reading.

May 23, 2011

HB 1131 Prime Sponsor, Representative Haigh: Regarding student achievement fund allocations. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli; Baxter; Brown; Conway; Fraser; Hewitt; Honeyford; Kastama; Keiser; Kohl-Welles; Regala; Rockefeller and Schoesler.

MINORITY recommendation: That it be referred without recommendation. Signed by Senator Pflug.

Passed to Committee on Rules for second reading.

May 23, 2011

2SHB 1132 Prime Sponsor, Committee on Ways & Means: Regarding reducing compensation for educational and academic employees. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli; Parlette; Brown; Fraser; Hewitt; Honeyford; Kastama; Keiser; Kohl-Welles; Pflug; Regala; Rockefeller and Schoesler.

Passed to Committee on Rules for second reading.

May 23, 2011

ESHB 1346 Prime Sponsor, Committee on Ways & Means: Making tax law changes that do not create any new or broaden any existing tax preferences as defined in RCW 43.136.021 or increase any person's tax burden. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli; Parlette; Brown; Conway; Fraser; Hewitt; Honeyford; Kastama; Keiser; Kohl-Welles; Pflug; Pridemore; Regala; Rockefeller and Schoesler.

Passed to Committee on Rules for second reading.

MOTION

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

MOTION

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

MOTION TO LIMIT DEBATE

Senator Eide: "Mr. President, I move that the members of the Senate be allowed to speak but once on each question before the Senate, that such speech be limited to three minutes and that members be prohibited from yielding their time, however, the maker of a motion shall be allowed to open and close debate. This motion shall be in effect through May 23, 2011."

The President declared the question before the Senate to be the motion by Senator Eide to limit debate.

The motion by Senator Eide carried and debate was limited through May 23, 2011 by voice vote.

SECOND READING

ENGROSSED HOUSE BILL NO. 2123, by Representatives Green and Condotta

Addressing the workers' compensation system.

The measure was read the second time.

MOTION

Senator Chase moved that the following amendment by Senators Chase and Nelson be adopted:

On page 10, after line 38, insert the following:

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**"PART 3. PROHIBITING DEDUCTIONS OF
WORKERS' COMPENSATION
PREMIUMS AND OTHER COSTS FROM WAGES AND
EARNINGS**

Sec. 301. RCW 51.16.140 and 1989 c 385 s 3 are each amended to read as follows:

~~((1) Every employer who is not a self-insurer shall deduct from the pay of each of his or her workers one-half of the amount he or she is required to pay, for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him or her to all employers under this title: PROVIDED, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. The deduction under this section is not authorized for premiums assessed under RCW 51.16.210.~~

~~—((2)) It shall be unlawful for the employer (~~—unless specifically authorized by this title.~~) to deduct or obtain any part of the premium or other costs required to be by him or her paid from the wages or earnings of any of his or her workers, and the making of or attempt to make any such deduction shall be a gross misdemeanor.~~

Sec. 302. RCW 51.32.073 and 1989 c 385 s 4 are each amended to read as follows:

~~((1) Except as provided in subsection (2) of this section,) Each employer shall (~~retain from the earnings of each worker~~) remit to the department that amount as shall be fixed from time to time by the director, the basis for measuring (~~said~~) that amount to be determined by the director. (~~The money so retained shall be matched in an equal amount by each employer, and all~~) Such moneys shall be remitted to the department in such manner and at such intervals as the department directs and shall be placed in the supplemental pension fund (~~:(— PROVIDED, That the state apprenticeship council shall pay the entire amount into the supplemental pension fund for registered apprentices or trainees during their participation in supplemental and related instruction classes).~~). The moneys so collected shall be used exclusively for the additional payments from the supplemental pension fund prescribed in this title and for the amount of any increase payable under the provisions of RCW 51.32.075, as now or hereafter amended, and shall be no more than necessary to make such payments on a current basis. The department may require a self-insurer to make any additional payments which are payable from the supplemental pension fund and thereafter such self-insurer shall be reimbursed therefrom.~~

~~((2) None of the amount assessed for the supplemental pension fund under RCW 51.16.210 may be retained from the earnings of workers covered under RCW 51.16.210.)~~

Sec. 303. RCW 51.32.242 and 2008 c 280 s 3 are each amended to read as follows:

~~((1) Except as provided in subsection (2) of this section,) Each self-insured employer shall (~~retain from the earnings of each of its workers~~) remit to the department that amount as shall be fixed from time to time by the director, the basis for measuring (~~said~~) that amount to be determined by the director. These moneys shall only be (~~retained from employees and~~) remitted to the department in such manner and at such intervals as the department directs and shall be placed in the self-insured employer overpayment reimbursement fund. The moneys so collected shall be used exclusively for reimbursement to the reserve fund and to self-insured employers for benefits overpaid during the pendency of board or court appeals in which the self-insured employer prevails and has not recovered, and~~

shall be no more than necessary to make such payments on a current basis.

~~((2) None of the amount assessed for the employer overpayment reimbursement fund under this section may be retained from the earnings of workers covered under RCW 51.16.210.)~~

Sec. 304. RCW 51.32.370 and 1994 c 265 s 4 are each amended to read as follows:

(1) The department shall conduct research on chemically related illnesses, which shall include contracting with recognized medical research institutions. The department shall develop an implementation plan for research based on sound scientific research criteria, such as double blind studies, and shall include adequate provisions for peer review, and submit the plan to the ~~((worker's [workers']~~) workers' compensation advisory committee for review and approval. Following approval of the plan, all specific proposals for projects under the plan shall be submitted for review to a scientific advisory committee, established to provide scientific oversight of research projects, and to the workers' compensation advisory committee. The department shall include a research project that encourages regional cooperation in addressing chemically related illness.

(2) Expenditures for research projects shall be within legislative appropriations from the medical aid fund, with self-insured employers and the state fund each paying a pro rata share, based on the number of worker hours, of the authorized expenditures. ~~((For the purposes of this subsection only, self-insured employers may deduct from the pay of each of their employees one-half of the share charged to the employer for the expenditures from the medical aid fund.))~~

NEW SECTION. Sec. 305. Sections 301 through 304 of this act take effect January 1, 2012."

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

Correct the title.

Senator Chase spoke in favor of adoption of the amendment.

Senator Holmquist Newbry spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Chase and Nelson on page 10, after line 38 to Engrossed House Bill No. 2123.

The motion by Senator Chase failed and the amendment was not adopted by voice vote.

MOTION

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

On page 11, line 32, after "appeals" insert ", must contain a statement that the right to medical benefits cannot be waived or resolved, and must contain a statement that accepting the agreement means surrendering rights to workers compensation benefits the worker has and benefits the worker may be entitled to receive in the future"

On page 14, line 24, after "final." Insert "Failure to pay benefits due during negotiation of a settlement agreement until it becomes final and binding is considered coercion and will subject the employer to penalty or corrective action under subsection 12 of this section, and the worker will have the option to rescind the settlement agreement."

On page 15, line 24, after "RCW 51.14.030." insert "A worker who has entered into a settlement agreement with an employer who has been found to have engaged in a pattern of coercion during the negotiation of the worker's agreement by the department has the

option to rescind his or her settlement agreement, even if the determination of coercion has been made after the thirty day revocation period established in subsection six of this section. For the purposes of this subsection, a employer will be found to have engaged in a pattern of coercion if the employer uses a threat to withhold payment of benefits or take adverse employment actions, or uses misrepresentation of worker rights or benefits, to compel or induce a person to enter into a settlement agreement. Any penalty imposed on an employer pursuant to this subsection will be collected by the department and paid to the worker."

On page 15, line 33, after "employment." Insert "Use of a prior settlement agreement in violation of this subsection is an unfair practice in employment and subjects the employer to remedies established in Chapter 49.60 RCW. If the department determines that an employer has used settlement agreement information obtained under this section in an unauthorized manner, the employer may be subject to penalty or corrective action, and may be removed from the retrospective rating program or be decertified from self-insurance under RCW 51.14.030."

Senator Conway spoke in favor of adoption of the amendment.

Senators Hobbs and Holmquist Newbry spoke against adoption of the amendment.

Senator Kline spoke on adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Conway and others on page 11, line 32 to Engrossed House Bill No. 2123.

The motion by Senator Conway failed and the amendment was not adopted by voice vote.

MOTION

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

On page 12, line 19, after "designee" insert "; and (vi) provide an amount of total compensation to the worker that is no less than eighty-five percent of the total permanent total disability benefits that the worker would be entitled to if the worker qualified for permanent total disability benefits."

Senator Nelson spoke in favor of adoption of the amendment.

Senator Holmquist Newbry spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Nelson and others on page 12, line 19 to Engrossed House Bill No. 2123.

The motion by Senator Nelson failed and the amendment was not adopted by voice vote.

MOTION

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

On page 12, line 26, strike "may" and insert "shall"

Senators Keiser and Conway spoke in favor of adoption of the amendment.

Senators Holmquist Newbry and Honeyford spoke against adoption of the amendment.

Senator Kline spoke on adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Keiser and others on page 12, line 26 to Engrossed House Bill No. 2123.

The motion by Senator Keiser failed and the amendment was not adopted by voice vote.

MOTION

Senator Conway moved that the following amendment by Senator Conway be adopted:

On page 17, line 14, after "settlement agreements." insert "By December 31, 2012 and annually thereafter, the department must report to the appropriate committees of the legislature on the use of claim resolution structured settlement agreements. At a minimum, the report must include: (i) specific information about employers using settlements, including the size and industry of employers and the number of agreements approved for state fund and self-insured employers; (ii) specific information about workers using agreements, including use rates by worker injury and demographic information of injured workers using agreements, whether workers had representation, and involvement of the self-insured ombudsman; (iii) specific information about the structure of the settlements, including the size of the settlement and the terms of structured payments, agreement revocation information, and information about the length of settlement negotiations; and (iv) specific information about agreement approval and disapproval rates by the board and disciplinary actions taken against non-complying, harassing, or coercive employers, if any."

WITHDRAWAL OF AMENDMENT

On motion of Senator Conway, the amendment by Senator Conway on page 17, line 14 to Engrossed House Bill No. 2123 was withdrawn.

MOTION

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

On page 25, starting on line 25, strike "or aid businesses in recovering from or during economic recessions"

Senators Nelson, Conway and Kline spoke in favor of adoption of the amendment.

Senator Hobbs spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Nelson and others on page 25, line 25 to Engrossed House Bill No. 2123.

The motion by Senator Nelson failed and the amendment was not adopted by voice vote.

MOTION

Senator Chase moved that the following amendment by Senators Chase and Nelson be adopted:

On page 30, after line 26, insert the following:

"PART 9. RETROSPECTIVE RATING PLANS

NEW SECTION. Sec. 901. The legislature finds that, according to the 2009 Wyman actuarial report, at least three miscalculations have occurred affecting the amount of refunds provided to the sponsors of retrospective rating plans with the participants of retrospective rating plans receiving substantial overpayments as a result of these miscalculations. These miscalculations include a recurring computer coding error which resulted in overpayments of about one hundred fifty million dollars, a misassignment of occupational disease claims resulting in overpayments of about three hundred million dollars, and a forty-five month adjustments limitation error which resulted in

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overpayments of about fifty million dollars. These overpayments have depleted the industrial insurance accident fund of at least five hundred million dollars, not including interest owed on the overpayments per RCW 51.48.260. The legislature finds that these overpayments have caused the accident fund to contain fewer assets than it otherwise would contain, requiring base premiums to be set at a level higher than would otherwise be necessary, and further causing the employers who are not members of a retrospective rating plan to subsidize retro members by inflating the amount of retro refunds beyond what was merited by the experience of retro member employers.

The legislature further finds that while retrospective refunds were intended to reward improved safety of retro agencies by returning amounts in excess of the difference between premiums paid and the developed cost estimate of claims owed, in many cases, retrospective refunds exceeded this difference by more than one hundred million dollars in a single year. For example, in the four quarters comprising the 2006 reporting period, retrospective program premiums paid were about seven hundred twenty-seven million dollars and retrospective developed claims were about seven hundred thirty million dollars for a loss of about three million dollars. Yet retrospective refunds during this period were about one hundred twenty-nine million dollars for a total loss to the industrial insurance accident fund of one hundred thirty-two million dollars.

NEW SECTION. Sec. 902. A new section is added to chapter 51.18 RCW to read as follows:

The legislature finds that the primary purposes of the retrospective rating program created in this chapter are increasing workplace safety, preventing accidents, and improving worker outcomes. The legislature finds that retrospective rating refunds are provided from the industrial insurance accident account, and that the use of Title 51 funds to improve workplace safety, prevent accidents, and improve injured worker outcomes are appropriate uses of such funds. The legislature further finds that any retrospective rating refunds not used to administer the retrospective rating group or to support the purposes of the retrospective rating program belong to and should be returned to the employer members of each retrospective rating group, with the sole exception that individual members may annually authorize use of retrospective rating refunds for purposes unrelated to worker safety and accident prevention, the primary purposes of the retrospective rating program, similar to the annual authorization required from the members of union organizations. The legislature therefore intends to allow and encourage retrospective rating group sponsoring entities to use retrospective rating refunds to create and maintain programs that improve workplace safety, prevent accidents, and improve worker outcomes while distributing the remainder of the refund to employer members of the group, subject to the optional annual authorizations by the members of each group. To restore public confidence in the use of retrospective rating funds, the legislature intends to make information concerning the sponsoring entities' administration of the program publicly available.

NEW SECTION. Sec. 903. A new section is added to chapter 51.18 RCW to read as follows:

Beginning January 1, 2012, and continuing for five consecutive years, the department shall:

(1) Conduct an annual actuarial review of the retrospective rating program. The actuarial review must include an examination of the method used to calculate retrospective premiums, refunds, and assessments, an examination of the impact retrospective rating refunds and assessments have on the accident fund, and an examination of any other factors necessary to conduct a thorough actuarial review.

(2) By December 31st of each year in which an actuarial review is conducted, report the contents of the review to the appropriate committees of the legislature.

NEW SECTION. Sec. 904. A new section is added to chapter 51.18 RCW to read as follows:

(1) With respect to refunds made by the department to a sponsor of a retrospective rating group on or after the effective date of this section:

(a) The sponsoring entity must distribute the retrospective rating refund or adjustment to employers in the retrospective rating group based on a distribution plan, less any amount retained by the sponsoring entity, within a time period selected by the sponsoring entity and set forth in the distribution plan. The distribution plan may not authorize a sponsoring entity to retain any portion of a refund or adjustment, except as authorized by this section. This distribution plan shall be provided to the department upon enrollment, and annually to the members of the retrospective rating group. The department shall make the distribution plan publicly available, excluding any financial information specific to individual employer members.

(b) The sponsoring entity may retain a portion of the refund for reasonable administrative costs. When any portion of the refund is distributed to the employers in the retrospective rating group, the sponsoring entity shall disclose to such employers and to the department the amounts of all administrative costs for which it has retained any portion of the refund and the specific purposes for which those costs were incurred.

(c) The sponsoring entity may retain a portion of the refund for costs directly related to the development and implementation of a safety plan to increase workplace safety and to prevent accidents. The safety plan shall be submitted to the department annually. The department shall develop rules to define the required elements of a retrospective rating safety plan.

(d) The sponsoring entity may retain a portion of the refund for costs directly related to claims assistance provided to its member employers.

(e) The sponsoring entity may retain a portion of the refund to establish and maintain reserves for the sole and exclusive purpose of covering the costs of future potential retrospective rating assessments and an amount of reserves necessary to protect against future penalties or other unexpected retrospective rating costs incurred during the same or a subsequent coverage year.

(f) The sponsoring entity must keep a detailed list of costs related to (b) through (e) of this subsection and report this list to the department and to employers in the retrospective rating group at the time the retrospective rating refunds or adjustments are distributed to members of the group.

(g) Any amounts retained by a sponsoring entity under (b) through (e) of this subsection shall be used solely for the purposes described in those subsections, and may not be used directly or indirectly for any other purpose.

(h) In addition to the amounts that a sponsoring entity may retain under (b) through (e) of this subsection, the sponsoring entity may retain a portion of the retrospective rating refund or adjustment due an employer member if the member has provided a written authorization allowing the entity to retain a portion of the refund or adjustment due the employer member. Any authorization provided by an employer member shall be effective for a period not to exceed one year. If a sponsoring entity retains funds due the employer member under this subsection, the sponsoring entity must notify the employer member that additional funds have been retained by the sponsoring entity, and inform the employer member of the amount withheld from the employer member under this subsection. The department shall develop a form to be separately executed by any employer member authorizing the retention of funds under this

subsection, which form shall (i) authorize the retention of either a percentage of the member's refund or a fixed dollar amount, and (ii) inform the member that the authorization is irrevocable for one year. The sponsoring entity shall use the form developed by the department or a form prepared by the sponsoring entity that is consistent with this subsection and has been approved by the department.

(i) Any amounts retained by a sponsoring entity under (h) of this subsection may be used by the sponsoring entity for any legal purpose, even if such purpose is unrelated to worker safety and accident prevention.

(2) The group must comply with subsection (1) of this section to be approved by the department for future enrollment.

Sec. 905. RCW 51.18.030 and 1999 c 7 s 4 are each amended to read as follows:

(1) Entities which sponsored retrospective rating groups prior to July 25, 1999, may not sponsor additional retrospective rating groups in a new business or industry category until the coverage period beginning January 1, 2003.

(2) For retrospective rating groups approved by the department on or after July 25, 1999, the sponsoring entity may not propose another retrospective rating group in a new business or industry category until the minimum mandatory adjustment periods required by the department for the first two coverage periods of the last formed retrospective rating group are completed.

(3) Subsections (1) and (2) of this section do not prohibit a sponsoring entity from proposing to:

(a) Divide an existing retrospective rating group into two or more groups provided that the proposed new groups fall within the same business or industry category as the group that is proposed to be divided; or

(b) Merge existing retrospective rating groups into one business or industry category provided that the proposed merged groups fall within the same business or industry category as the groups that are proposed to be merged.

(4) Under no circumstances may a sponsoring entity propose retrospective rating groups in multiple business or industry categories in the same application to the department.

(5) An insurer, insurance broker, agent, or solicitor may not:

(a) Participate in the formation of a retrospective rating group; or

(b) Sponsor a retrospective rating group.

(6) A sponsoring entity may not require a participating member or applicant to: (a) Agree to reenroll in the group's future coverage period, (b) maintain membership in the sponsoring entity or any other organization beyond the coverage period, which includes the three-year period during which further refunds and assessments may be made, or (c) contribute funds to the sponsoring entity or any other organization in excess of the amounts authorized by this act.

NEW SECTION. Sec. 906. A new section is added to chapter 51.18 RCW to read as follows:

FULL DISCLOSURE OF RETRO AND NONRETRO LOSS RATIOS. With respect to refunds/subsidies made by the department to a sponsor of a retrospective rating group:

(1) If retrospective premiums, as a group, exceed retrospective developed claims, as a group, the amount refunded to retrospective agencies may not exceed the difference between premiums paid by retrospective agencies and the developed cost estimate of claims owed by retrospective agencies.

(2) If retrospective developed claims exceed retro premiums paid, the amount additionally assessed to retrospective agencies may not be less than the difference between the developed estimate of claims owed by retrospective agencies and premiums paid by retrospective agencies.

(3) The department must provide evidence and information to the public on its web site fully documenting and explaining how the

retrospective refund/subsidy calculation for each reporting period was determined including complete data on retro premiums paid and developed losses and nonretrospective premiums paid and developed losses for the same period and a comparison of retro to nonretrospective premiums paid and developed losses so that the public can readily determine from the evidence and information provided that, after all retrospective refunds and assessments, the loss ratios of retro and nonretrospective employers have been properly equalized.

NEW SECTION. Sec. 907. A new section is added to chapter 51.18 RCW to read as follows:

FULL RECOVERY OF ALL OVERPAYMENTS TO RESTORE THE ACCIDENT FUND. With respect to refunds made by the department to a sponsor of a retrospective rating group:

(1) The department is required as provided in RCW 4.16.160 and 51.48.260 and WAC 296-17-90402 to accurately determine the cost of all overpayments due to the actuarial unsound accounting practiced uncovered by the 2009 Wyman actuarial report. These unsound practices are inconsistent with WAC 296-17-90402 and resulted in overpayments to retrospective groups included an annual recurring computer coding error, resulting in an estimated one hundred fifty million dollars in overpayments, an occupational disease misassignment error resulting in an estimated three hundred million dollars in overpayments, and a forty-five month adjustment limitation error resulting in an estimated fifty million dollars in overpayments.

(2) The department is required as provided in RCW 4.16.160 and 51.48.260 and WAC 296-17-90402 to collect all overpayments plus interest and restore these funds to the industrial insurance accident fund such that, for all past periods, the proportion of retrospective to nonretrospective premiums to developed claims is restored to the intended balance.

(3) No further refunds are to be issued to retro agencies until all past overpayments have been recovered and paid back to the industrial insurance accident fund with interest.

(4) A fourth retrospective adjustment period must be added at sixty months to more accurately determine long-term costs of retrospective programs and to more accurately determine the cost differences between the retrospective and nonretrospective programs.

(5) The department must adopt policies and procedures to assure greater transparency of all income and expenses of all retrospective programs.

NEW SECTION. Sec. 908. A new section is added to chapter 51.18 RCW to read as follows:

(1) The department is required to review all past retrospective refunds and submit a report to the legislature by December 1, 2011, identifying any past cases when retrospective refunds exceeded the difference between retrospective premiums paid and retrospective developed losses and whether such refunds maintained equitable ratios compared to nonretrospective groups.

(2) The department is required to develop a plan to restore the contingency reserve to a minimum of twenty percent of basic plan liabilities within the next ten years.

NEW SECTION. Sec. 909. A new section is added to chapter 51.18 RCW to read as follows:

Any overpayment recovered pursuant to section 907 or 908 of this act must be deposited in the rainy day account created in section 601 of this act."

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

Senator Chase spoke in favor of adoption of the amendment.

Senator Hobbs spoke against adoption of the amendment.

TWENTY EIGHTH DAY, MAY 23, 2011

2011 1ST SPECIAL SESSION

The President declared the question before the Senate to be the adoption of the amendment by Senators Chase and Nelson on page 30, after line 26 to Engrossed House Bill No. 2123.

The motion by Senator Chase failed and the amendment was not adopted by voice vote.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed House Bill No. 2123 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kohl-Welles, Sheldon, Kastama, Ericksen, Brown, Honeyford and Holmquist Newbry spoke in favor of passage of the bill.

Senators Nelson, Conway, Keiser and Chase spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2123.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2123 and the bill passed the Senate by the following vote: Yeas, 35; Nays, 12; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Baxter, Becker, Brown, Carrell, Delvin, Eide, Ericksen, Fain, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kohl-Welles, Litzow, Morton, Parlette,

Pflug, Pridemore, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Benton, Chase, Conway, Fraser, Harper, Keiser, Kline, McAuliffe, Murray, Nelson, Ranker and White

Excused: Senators Prentice and Shin

ENGROSSED HOUSE BILL NO. 2123, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 8:15 p.m., on motion of Senator Eide, the Senate adjourned until 9:00 a.m. Tuesday, May 24, 2011.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

TWENTY EIGHTH DAY, MAY 23, 2011

2011 1ST SPECIAL SESSION

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